

AUG 7 1997

In The

Supreme Court of the United States

October Term, 1996

STATE OF SOUTH DAKOTA,

v.

Petitioner,

YANKTON SIOUX TRIBE, a federally recognized tribe of
Indians, and its individual members; DARRELL E. DRAPEAU,
individually, a member of the Yankton Sioux Tribe,

Respondents,

and

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT,
a nonprofit corporation,

Respondent.

On Writ Of Certiorari To The United States
Court Of Appeals For The Eighth Circuit

JOINT APPENDIX
VOLUME II, PAGES 203-488

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The agreement was also read and interpreted to the chiefs and to various parties of the headmen, and all members of the tribe had a good understanding of the various provisions of the agreement before signing it. And the same was signed freely and without any coercion or undue influence.

I also certify that more than a majority of the adult male members of the Yankton tribe of Sioux Indians have signed the said agreement.

Yankton Indian Agency, Greenwood, S. Dak., December 31, 1892.

C. F. PICOTTE,
U.S. Interpreter.

We hereby certify that the above statement of the U.S. interpreter is correct in every respect.

WILLIAM T. SELWYN,
Special Interpreter.
BAPTISTE P. LAMBERT,
Witness.

(Omitted power of attorney.)

(Omitted names of twenty-three Indian signers, dated December 31, 1892, and names of witnesses.)

Council of the Yankton Indians to consider the question of selling their surplus lands.

YANKTON INDIAN AGENCY,
Greenwood, S. Dak., October 8, 1892

Council met at 1 o'clock p. m.

Present, Col. E. W. Foster, the agent: Commissioners John J. Cole, of St. Louis, Mo., and J. C. Adams, of Webster, S. Dak., the Indian committee of 24 and 10

moderators: the chiefs, head men, and members of the tribe, to the number of about 180 Indians.

Commissioner W. L. Brown, of Lake Preston, S. Dak., was temporarily absent from the reservation.

William T. Selwyn, interpreter, and Peter St. Pierre, assistant interpreter.

Col. E. W. Foster, the agent, spoke at some length, introducing the commissioners to the Indians. In substance he said:

"The Government has sent a commission to you to negotiate with you for your surplus lands. Dr. Brown, whom you all know, was called away, but will return soon. Col. Adams, of South Dakota, and Mr. Cole, of St. Louis, are now before you, and these gentlemen will tell you something about their mission. You have had your homes allotted to you, and it is now for you to say if you will sell your surplus lands to the United States, and these men are here to discuss that question with you. This is an important matter for you to decide and you should consider it carefully.

"I believe that each band has appointed three of its members to constitute a committee of 24 to represent the tribe before this commission. Is this committee satisfactory to all of you?"

There was a general response of "How," and it was explained that there were also ten other men appointed to act with the committee as moderators. Agent Foster continued:

"Now, I hope you will take hold of this matter earnestly and come to some conclusion about it. You do not

have to sell your surplus lands if you do not want to, and it is for you to consider whether it is to your interest to do so or not. But if you want to sell, tell these men so and tell them what you want. I have no doubt that these men will deal fairly with you, but you have a right to look out for your own side in this transaction, and I hope you will stand together and act for the best interests of the tribe. The commissioners will now address you and tell you something about their mission."

COL. ADAMS spoke as follows: My friends, we are glad to meet you here to-day. We called you here that you might see what we are like as white men, and that we might see what you are like as Indians. We were sent here by the Great Father to see about a big matter. We understand that you each received an allotment of land on which to make a home. For the first time in the history of the western tribes all of the Indians who will may have a home they can call their own. Hearing this, we also understand that you own, outside of your allotment, a large quantity of land in common. It is this land that you own in common that we were appointed by the Great Father to talk to you about. In talking about this, as a business matter, we want you to remember we are appointed by the United States Government to negotiate with you for the purchase of this land for the Government. As these lands are now situated, the members of the tribe are receiving absolutely no benefit from them. If you conclude to sell your lands, then the older people will receive some benefit from them before they die. Under the law passed by Congress, as soon as you sell your surplus land you become citizens of the United States: in becoming citizens, your young men will become

politicians and fill offices as do the white men, and both your young and your old men who are called to citizenship under the law will assist in making the laws which will govern you as citizens of the State and nation; therefore, for the benefit of the old as well as the young – for the old to receive a benefit before they die, and for the young to sooner learn the ways, the details of citizenship. The Government does not want to speculate in these lands, but to benefit the Indians from the proceeds of their sale. We want to deal honestly and fairly with you, to do you good.

We have still some instructions to come from Washington, and hope in a few days to give you further light upon the subject of our mission to you.

With the 24 men appointed by the tribe we shall always be glad to meet. We shall be glad to have them come to us at any time for any information they desire, and which we will cheerfully give.

The Great Father desires and seeks in this transaction the benefit of the tribe, and what you may receive in this matter will be for this tribe alone, to help elevate you to citizenship, and as soon as you become the equals and assistants of the white man in making the laws, to be near him and learn his ways, you will learn to farm, to do all kinds of business, to be citizens in the true sense of the word. It might be, after you sold your land, you could have this reservation organized as a separate county. If this could be done – I do not say it can – you could govern your own people in your own way, so long as you obeyed the laws of the State. I do not say this can be done, but see no good reason why it might not be done.

We seek to do you justice as well as the United States in making a treaty with you for your lands. I am aware you have changed wonderfully for the better: that you know more of civilization and are growing more into its ways: that you are improving morally and religiously and we feel gratified to note that the missionaries we sent among you have done a great work, have fitted you to become citizens and to honor yourselves in the discharge of the duties that we hope will soon devolve upon you. I shall be glad to see you citizens and independent men, who can learn to support yourselves.

When a treaty is made it can not become a treaty unless ratified by Congress, so what we do here will have to go to Washington and be ratified by the Senate and House of Representatives of the United States before it becomes operative, before you can enjoy its benefits. It is, therefore, necessary that we should act prudently, like men, and make an agreement that will be so fair to you as well as the Government that Congress will at once recognize its fairness and approve it as a work that will result in good to this tribe of Yankton Indians. In a word, the Government seeks only your good in asking you to dispose of this property that is not doing you a single cent's worth of good.

I close, saying that we ask you to come to us at any time and tell us what you want in this connection. Col. Cole will speak a few words to you.

JOHN J. COLE. My Dakota friends: I am glad to meet you. I am glad the Great Father has sent me here, and I hope I shall be able to serve you and so serve the

Government acceptably in the business which has brought us together.

Your agent has spoken right. He is a good man. He is your friend. He has told us that we must make this treaty in the interest of the Indians. He will watch everything we do and protect you. He will counsel with your chiefs and head men and with your committee and find out what you want and try to get it for you.

The Great White Father has sent us here to treat with you. He wants to give you a chance to sell your surplus lands, because he thinks it will be for your good. But he does not want your lands for nothing. He has told us to pay you for your lands all they are worth, but you must not set too high a price on your lands or he will not buy them. He has told us to tell you that you will not be forced to part with our lands unless you want to. (How!) He does not want you to sell you homes that he has allotted to you. He wants you to keep your homes forever. (How!) He only wants you to sell your surplus lands for which you have no use. If you want to sell these surplus lands we will buy them and pay you all they are worth, and the Government will sell them to men who will make homes on them and will build good houses and make good farms, and this will make your other lands - your homes - more valuable, so that the lands you have left will be worth more than all your lands are now worth, and what you get from the Government for the surplus lands will be a clear gain to you.

The buffalo is gone, the antelope is gone, you can no longer live by hunting. You must plow like the white man: you must raise cattle to take the place of the buffalo:

you must raise sheep to take the place of the antelope. You must raise wheat and corn and oats to make bread and to feed your stock. You must raise everything which the white man raises and have plenty to eat and plenty to sell. Then you can build good houses where you can keep warm and dry, and be comfortable. You can wear good warm clothes and have many comforts that will make you happy. (How!)

The antelope was shy and hard to get. The buffalo sometimes wandered far away and you had a long chase to get meat, and your women and children nearly starved while you were trying to provide food, but now you can always have plenty. The cattle will plow your lands, they will give you milk and butter and cheese, and will give you plenty of meat: their skins will make you boots and shoes that will keep your feet warm and dryer than moccasins. The sheep will furnish you wool to make good warm clothes; they will also furnish plenty of meat that is as nice as the antelope.

In the old times you could not always have enough to eat: you could not have enough clothes to keep you warm. You were afraid the white man would come and kill you or drive you away. You were afraid hostile bands of Indians would make war upon you and you had always to be ready to go on the warpath. Now you can live in peace with your women and children and have plenty. (How!) Peace is strong: plenty is strong. They make a great people that nobody can hurt. The Great Father - President Harrison - is very strong. He is the greatest and strongest chief on earth. His great people make him strong, and the Great Spirit makes him strong, for he is a good man. His great Secretary - Mr. Noble - is

a great man and a good man and a strong man, and President Harrison and Secretary Noble are your friends and will always be your friends if you do right, and they want to protect you and benefit you. (How!) They have sent us here to meet you and shake hands with you and talk to you and counsel you what is best for you to do. (How!)

They sent us to tell you that the Government would buy your surplus lands if you want to sell them. But they also told us to tell you that you would not be compelled to sell these lands if you do not want to. (How!)

You not only have a home as a tribe, but every man, woman, and child among you each now has a home which no one can take away from you and the Great White Father wants you to always keep these homes and live on them in peace and comfort like white men, and be citizens and have plenty. (How!) The Government has dealt liberally with you and you are a rich people. You are richer than the same number of white people. If you cultivate your farms you can become very rich and powerful and you and your children will be comfortable and happy. (How!)

Now tell us if you want to sell these lands. Tell us how much you want us to pay you for them. Tell us what promised you want from the Government. Counsel among yourselves and do what you think will protect your interests. Do not be deceived by selfish or bad men who will counsel you against your best interests. Come and talk with us freely. Send your chiefs to talk with us. Send your committees to talk with us. And each one of you come and talk with us when you want to.

In your old life the tribal condition was a necessity. It united you and protected you and made you strong. But you are now living under new conditions and you must drop your old forms which are not suited to these conditions and take up new forms suited to your new mode of life. The Government seeing this sent an allotting agent to you to help you divide your land and select your homes. This has been done and you have been made citizens of the United States, the proudest title that any man can bear.

Now that you have your homes and that your allotted lands are more than you can make use of, you have sent word to Secretary Noble that you desire to sell your surplus lands and get money to help you to improve your farms and build good houses and buy stock. The Great Father and his Great Secretary, Mr. Noble, think you have acted wisely in selecting your homes in severalty, and in offering to sell your surplus lands, and in answer to your request they have sent us here to treat with you. (How!) They have sent us here to buy these surplus lands for homes for white men who will settle among you; who will live peaceably and neighborly with you; who will cultivate these surplus lands and make your allotted lands much more valuable. (How!) I thank you for listening so attentively.

HENRY STRICKER shook hands with the commissioners, and said: You have spoken very nice of us and we have all felt very glad for what you have said. My two friends, what you have said we have all heard it and we feel very glad. You see us that we are like human nature. So we would want to know if the President will do what we ask him and help us what we want of him. And if that

is the case, if the Government will help us, we will raise our little boys up to be good men, so if you will help us, we hope we will make a treaty that will be beneficial to us as a tribe. You told us whatever we, the members of the tribe, decide to do we can do. We will hear from you and you will hear from us. So we will just wait for the Yankton tribe alone to decide.

WILLIAM BEAN (chief), shook hands with the commissioners, and said: We know who you are and that you have come to see us about our land. You have told us what you are here for, and this we all know. At present I have not much to say. And what you have come for we shall not bother ourselves too much about it this time.

I want you to shake hands for us. If you agree with us whatever we judge, if you will grant us what we ask, I will shake hands with you. (Shook hands with the commissioners and concluded.) That is all I have to say.

JOHN J. COLE. I wish to add a few words to what I have already said to you. This meeting has been very interesting to me. I am greatly pleased to see you so far advanced in civilization and so well prepared for the new conditions that now surround you. When I looked over this assemblage and saw your large heads and noted how attentively you listened to what we said, I knew that you were a people who could take care of yourselves. Brains give power, and a people with large heads are stronger than a people with small heads, and I am satisfied that you can take care of your interests in your transactions with this commission. I am glad of this, for the Government has no desire to take any advantage of you and your ability to look after your own interests will facilitate

our work. I have nothing more to say to you to-day unless you have some questions to ask. I want you to feel free to question us and to come to us and talk about this business.

COL. ADAMS. I was very much surprised, when I arrived here, to see how well you were prepared to enter upon your duties as citizens of this great nation, and when we have said you would become rich it was in recognition of the fact that if this negotiation was successful you would receive from the Government the money that would enable you to fix up your farms and to start out fairly in your new life, and that you would, before many moons become a prosperous and happy people. Come and see us at any time, we will always be ready to talk with you. I have finished.

Council then adjourned.

OCTOBER 21, 1892.

The contract was then read article by article and orally translated into the Dakota language as read.

It was then requested that a written form of the agreement be translated into the Dakota language for the use and consideration of the tribe's committee, which request was acceded to by the commission.

Council adjourned.

FRIDAY, December 2, 1892.

Council of the tribe of Yankton Sioux Indians to confer with the commission in regard to the sale of their surplus lands, the council having been convened on a general call.

Present, Commissioners John J. Cole, J. C. Adams and W. L. Brown on the part of the United States; the Indian committee of 24, with 10 moderators, chiefs, head men and members of the tribe to the number of about 185 Indians.

William T. Selwyn, interpreter, Henry Lyman, assistant interpreter, Miss Bessie M. Johnston, Stenographer.

Council called to order at 2:30 p.m. by the chairman of the commission.

Col. E. W. FOSTER stated the purpose of the meeting to be for the committee of 24, appointed by the several bands, to confer with the commission in regard to the selling of their lands; that he wanted all to express themselves fully, those who wanted to sell, and also those who did not want to sell. He then said, "I leave the council in the hands of the chairman."

EUGENE BRUNOT. My friends, in the beginning I want to make some general remarks. It is my opinion that whatever is done here should be done according to law. It is not the purpose of this meeting to talk outside of this business. It is like a box; if there is no label on it, you do not know what is in it until it is opened. To find out the feeling of this meeting, it must be opened. I want everything in this council stated openly, so it will be understood by all, so that the people will be prepared, and to state anything they may have in their mind. Of all the treaties made with the different Indian tribes the treaties made with this tribe are the poorest in my mind. Three commissioners have been sent out to negotiate with us for our surplus lands, and I want them to state the price so we can confer with them.

(The council was then interrupted by a parley in regard to getting an immediate answer from the commission in regard to Eugene Brunot's question.)

EUGENE BRUNOT. The question that I put, I asked it that I might be answered.

COL. E. W. FOSTER. I would urge you to go on talking, and would like to hear from others. This is a matter in which you are all interested, and you can talk of it with perfect freedom.

EUGENE BRUNOT. It is the desire of the committee of 24, and the others of the tribe outside of them, that this question be answered.

JOHN J. COLE. When the commission came to you in the first place we laid before you the object of our mission and told you what we had come for, and did not then ask you for an immediate answer. I have been away for several weeks, and do not know what has been going on and done on this reservation for some weeks past. Your people have not told me even whether you desire to sell the land at all or not, nor have they told my fellow commissioners. Now your first speaker asks a question and wants an immediate answer. That question involves the entire work of the commission. I have not been here to go over your lands and value them, nor have my fellow commissioners done so. It is impossible to answer so important a question without consultation together. As Col. Foster has expressed it, we want the council to be free and open, all of you to express yourselves freely, and ask all of the questions you want; so we may have the whole matter before us. Then we can meet you again in

council and confer with you, but it is impossible to answer you today.

WILLIAM T. SELWYN. Mr. President, I have three questions to put to the commissioners. I think if anybody is going to make any remarks on this subject at this meeting or at any other time, I would like to hear from them now. I mean you men, old men, and everybody.

I think there are people here who desire to have a statement made or make it. This proposition refers to the clause in the Dawes bill which provided that a majority of the people must vote to govern in any transaction affecting the tribe. For my part I do not know whether the people want to sell their land or not, and I do not desire to influence anyone in either way. I want to ask a second question. If we make a treaty, can we go to a land office and have it recorded before it goes to Washington that we may know that it is not changed? Sometimes commissioners have been sent out to us to make treaties, and changed have been made in the words of the treaty. I have a third question. The commissioners are wiser than our people. They are only Indians and ignorant. But I want to ask if the commissioners will listen to their propositions and embody them in the treaty. I desire that everything be done fairly and openly.

HENRY SELWYN. Mr. President, we have put a question and desire it answered. I do not think this talk is worth anything. When the question is answered then we will have something to talk about. As my brother, Mr. William Selwyn, has said, everyone, chiefs and all, should get up and speak, but the committee first.

WILLIAM T. SELWYN. There are no kings or emperors in this country. The power to make treaties and laws prior to the Revolutionary war and the Declaration of Independence, rested with a few men, but now it is different. Every citizen has a right to free speech and can exercise that right, and this is in effect at this agency. Everyone should have this privilege at this time and no one should hinder him in it.

EUGENE BRUNOT. There are people gathered here, people from outside and the committee to talk with the commissioners. We know that these people do not know much and can not depend on the shrewdness of any one man. We do not want to compete with the commissioners in intellectual power, but will reduce the subject to one proposition. We hear the white people talk of a fact and we know that it is a fact. They say that the earth is round like a ball: that a man came across the ocean, and that man's name was Columbus. They say, too, that the first people he met on this new land were in features like an Indian and also like them in dress. Ever since the landing of this man, they have called this people, and especially this tribe, Sioux. Apples have seeds in them which we call "Sioux," and I think this is very appropriate to these people. You can cut the apple open and take out the seeds: prepare the ground and plant the seeds and they will grow; but it will not help the apple from which the seeds were taken.

A commission of three persons are selected by the President and sent out here to buy our surplus lands. I think the one thing that we want to-day, is to have this question that we put answered. We can then answer any

questions you want to ask, and meet to consider the question and give you an answer in this matter.

WILLIAM T. SELWYN. When anything is to be done the best thing is to understand how it is to be done. My friend who just sat down says that we are ready to talk of the subject, and I want to know if he refers to the propositions. I have them in my pocket, but want to know the opinion of the people. If it is the desire of the tribe to have them read I am willing to read them now.

HENRY SELWYN. The commissioners must have in their possession the answer to the question put to them, and if they have, want them to answer it now, and then there will be something to talk about. Now there is nothing to say.

COL. FOSTER. I want you to keep on talking. From the expressions of these people it is evident that they are ready to sell. When a man meets another with a horse and asks him if he will sell, if he replies, "What will you give for him?" it is evident that he is ready to sell.

COL. ADAMS. I understand that you have twelve propositions or questions to ask this commission. We would like to have you give us these questions that we may have the whole subject before us, so far as you have taken action on the subject. We can then take them under consideration, and decide upon them, so far as this commission can do so under its instructions from Washington.

WILLIAM T. SELWYN. Mr. President, I think the reading of these twelve propositions should be put off, and if a meeting is to be held to-morrow, read then, as it

is getting late, and I have to put some questions which I desire answered.

COL. ADAMS. Mr. President, in answer to Mr. Selwyn's question, "Can this treaty be recorded in some land office, I would say: If we can agree on the terms of a contract for the sale of this land to the Government, we will take a copy of the contract or treaty to the recorder of this (Charles Mix) county. You appoint some member of you tribe that can speak English to go with us and we will have a copy of this treaty put on the records of this county. Any members of your tribe can go there at any time and satisfy themselves whether or not the treaty is being properly carried out. We will have a certificate of the auditor of the county attached to the copy going to Washington, certifying that this is a true copy of the treaty as made. We will do this to avoid any possibility of change in the treaty, and so that you can go to the records and if any change is made it will render the treaty void. To the second question, "Can propositions of this tribe be incorporated in the treaty," I say yes, if we can agree upon them; but we can not agree until we know what these propositions are.

WILLIAM T. SELWYN. As there are propositions and questions on both sides, I move that we adjourn until to-morrow. (How!)

EUGENE BRUNOT. I think when the Indians gave their consent by saying "How" to William Selwyn, they did not understand it or were not thinking of it at the time.

We have an agent here, and the agent has farmers going out among the Indians making reports. When the

farmers have them prepared they send them to the agent. The agent takes these reports of the farmers, and from them makes a report of his own which he sends to Washington. I think the treaty will be made in about the same manner and sent on to Washington, and the propositions contained in this treaty will be subject to change.

WILLIAM T. SELWYN. Mr. President, I said not long ago that when any important business is to be transacted it is best to know the business. I have noticed that certain propositions in this treaty are to be subject to the approval of the Commissioner of Indian Affairs, and I therefore asked if it were possible to record the treaty, if one were made, and the chairman of the commission answered yes; that it should be recorded, and that should any change be made here or at Washington the treaty would be null and void. There are very few people here, hardly over a hundred, and I think it would be best on both sides to adjourn until to-morrow.

COL. ADAMS. Mr. President, Mr. Eugene Brunot asked this question at the beginning of the council. "What will you give us for our lands?" Now there are two ways for you to sell your land. These two ways have been explained to many of you. I want to ask which one of these two ways do you want to adopt if a treaty is made. One way is by appraisement and setting as the Omaha Indians sold their land. The other is by direct sale at a fixed price, and all of the price you will get. I want to know which of these two ways you want to adopt.

COL. FOSTER. Do you Indians understand these two ways mentioned by the commissioners sufficiently well to consider them?

BIG STINGER. I understand it.

EUGENE BRUNOT. Mr. President, at the beginning of this council we asked a question and now the commissioners have also asked a question. Now the committee appointed by the people have also a question to put to the people. I now move that we adjourn this meeting, and go to where we will gather for the feast and put this question to them there.

RUNNING BULL. On my part I never extended an invitation to these commissioners to come out here. I did not say, "My friends, come out to us; we have some surplus land we wish to sell to you." Probably the President desired to purchase this land, and has therefore appointed you three men to come out here for that purpose, and these young men have put a question to you. I was a member of a committee once that made a treaty with the Government, and the promises and stipulations made in this treaty were disregarded by the Government. There are two other members of that committee here now, Mr. Charles Picotte and Jumping Thunder. On account of this violation, we fear any commission sent out by the Government. That according to the treaty stipulations the Government issues annuities to us and that the Government has sent Col. Foster as our agent. It is his duty to issue these annuities when they come, but this is an entirely different matter, and Col. Foster should not issue instructions to this commission.

IRON BULL. It is always best to do things in the light, and the one sun we have to work in is about to set. After dark most people do to work well, and as the commission that is here will likely stay here some time, I

think it is best to adjourn. I do not myself like night work. I think it is like going into a store at night. You buy something and afterwards find that it is very cheap looking and very poor and you have paid a big price for it.

HENRY SELWYN. Mr. President, I think we ought to adjourn until tomorrow, and I think you should state the time we will then meet. I would suggest 10 o'clock, or in the afternoon. We have a question we wish to put to the people.

FELIX BRUNOT, chairman of the committee. The council will adjourn until 10 o'clock to-morrow morning. The people will now go to their feast on the hillside.

SATURDAY, *December 3, 1892*

The council met and was called to order at 10:00 a.m. pursuant to adjournment.

Present, the full commission, the Indian committee of 24, with 10 moderators, chiefs, headmen, and members of the tribe to the number of about 212 Indians. Felix Brunot, chairman of the Indian committee, (unreadable), William T. Selwyn, interpreter, Henry Lyman and George Stricker, assistant interpreter, Miss Bessie M. Johnston, stenographer.

COL. ADAMS. Mr. President, in opening this council today, we want to ask every member of the tribe that feels like saying anything to speak freely. We do not want to confine it to two or three members, but have everyone express some opinion. We want as full an expression of your opinions as possible, for the guidance of the commissioners and your own good.

FELIX BRUNOT (chairman). It is the desire of the commissioners that you express your opinions, and I think you should do so.

HENRY SELWYN. When the commissioners first came here and had a council I understood that one of the commissioners said that this Yankton tribe of Sioux Indians made a certain treaty, from which the Indians derived no benefit whatever. I have been thinking of the words of the commissioner.

The Yanktons at one time owned a very large tract of land. I have thought it over and questioned myself whether having so large a tract of land benefited them or was a burden, and I have compared their condition as it was then and as it is to-day. I think that the Indians then were physically stronger and better off in every way. I think the reason they were better off and more prosperous was that they never stayed for any length of time in any one place, and in changing from place to place they avoided diseases. While they roamed about as heathens they had more to eat and they could search for a greater variety. Probably the commissioners know that game abounded everywhere at that time, and the Indians had all the food they wanted. Now the commissioner says we have sheep and cattle instead of deer and game, but these are not in abundance. So this large tract of land was not lying useless.

The Creator supplied these people while they were heathen with an abundance of food, so they were well and strong. People died in those days, but not so fast as they do now. There were but three common diseases, and the deaths did not compare with those of to-day. Now in

one year 40 or 50 die. In those days a man could raise a family of 10 or even 15 children. Forty years ago there were many old men and women among the Yanktons. We are dying out very fast. To-day the people suffer very much from scrofula, lung troubles, and sore eyes. One of them is particularly fatal – that is lung trouble. It seems as if these troubles came from our settling down on a reservation. When they gave up their former habits of life and began living more like whites I think they brought on these diseases by their ignorance of habits of civilized life. Since living on a reservation we have lived in poor houses. They are log houses with dirt roofs and the sides plastered with mud. When we have heavy rains the roof and sides leak and the ground beneath becomes wet and does not dry off for nearly a month. Everything in the house smells musty. (How!) I think if one of the commissioners would go and live in one of these houses for a month his health would not be improved. Former treaties should have provided for the building of suitable houses. (How!) I heard a story about three years ago of a man and his son taking refuge in a haystack. The son took the inner side and the old man the outside. Furthermore the old man took off his overcoat and put it on his son and slept beside him without it. The father was frozen to death, So it seems to me with the Indians when they sell their land to the Government.

They are on the outer side and take off their overcoat for the other. On this land the Indians sold, there are now many stores, many towns, and several railways. Then look at the Indians. They are poor and wretched. It is like the man taking off his overcoat. The amount for the payment of the land purchased by the treaty of 1831 is as

follows: The first stipulation was that we should receive a steamboat load of clothing, winter and summer for ten years. Instead of a boat load there were a few boxes. I have known many of the women to go home without anything at the issues, and cry over it. Then there were other stipulations that were never carried out. One was that they were to give us schools: another that they would issue us cows and oxen; another that they would give us houses. Horses would be issued to us that we might raise stock. None of these were carried out. One stipulation was partly carried out in this way. They took two boys East to school. One of them died East and the other came home as ignorant as when he went away. This is how the Government has treated the Indians when it has made treaties with us. I would like to put the question to these commissioners here – which derived most benefit from this treaty, the Indians or the whites? (How!) The benefit we derived is very small indeed compared with the benefit the Government derived from the sale of that land. (How!) We are as poor as when we sold the land. (How!)

I will now refer to the treaty of 1858. This is the second time we sold land to the Government. I think they should be very grateful to us for selling our land. We do not know how many acres we sold at that time, but know it was many thousands of acres. I have traveled over it and know that it takes a man six days to go to the eastern line and six days to go to the western boundary. I have made inquiries regarding the price we sold this land for. I asked a certain party and his reply was, I think one-half cent per acre. I asked another party and they said not

more than one cent per acre. If the Sissetons and Titonwan had sold their land at the same price at which we sold ours in 1858 per acre, they would have given the Government their lands for nothing. All the Indians have sold land at times to the Government, but we have given them the best land, especially that along the James River. In two previous treaties entire payment has not been made, and that is the way this would probably be. Until all things are carried out and straightened up this land should not be sold. (How!) Our people are anxious to have the Government investigate these charges. (How!) The first clause of the treaty of 1858 tells us we are to be assigned to a reservation containing 400,000 acres and we should own and occupy this so long as we remain at peace with the United States. (How!) Our people have remained peaceable, and though whites have molested Indians our people have not spilled white blood. (How!) When the Government had a war with the Santees I heard that a general said they would exterminate the Santees and then march west and exterminate the other tribes. When a portion of this army went farther west, on their way back they broke the window glass in our houses as they passed through here. A party of Indians went on a hunting trip and passed Fort Randall. When they started on the soldiers asked where they were going, what territory they were to roam over, and how long they were going to stay. They told them to return, and when they consented to they were all killed but one.

Our land was sold for	\$1,600,000
A cash payment of	50,000
First ten years, per annum	65,000
Second ten years, per annum	40,000
Third ten years, per annum	25,000
Fourth, twenty years, per annum	15,000

One hundred and fifty thousand dollars paid to half-breeds at that time.

I desire to ask the chairman of the commission here if, in expending these large sums from the beginning of this treaty, there were any surplus at times?

Commissioner COLE. The commission can not answer your question in regard to this treaty of 1858. The answer to this question would involve an examination of all the records in the Indian Office from 1858 to the present time. If your people have any doubts on the question, if you will send representatives to Washington they will show them the records – just how it was carried out, what goods were issued, and in what quantities.

HENRY SELWYN. We have not seen any of this money promised in this treaty. Cash payments were to be made the Indians. The first payment was \$5, the second \$4, the third \$4, and the last \$2.50. That is all the cash payments made. I think some individual parties profited. So if this land is sold it will be the same way. Our share will be very small. I thought when we sold our surplus land we would have the benefit of the entire sum, but it appears that this must not be. The interest on the money is to be divided into three parts and only one of these parts come to the Indians. I do not like that. One of the treaty stipulations is as follows: That positions on the agency be given Indians if competent to fill them. (How!) There are no Indians who have good paying positions. These are all given to whites, though there are Indians competent of holding them. By these treaties the salaries and benefits should come to the Indians, but are given to

the whites. The Indians are not acquainted with business nor the value of money.

I want to speak of the Pipe-Stone Reservation. By the treaty of 1858 it seems that the present Pipe-Stone Reservation was sold the Government by the Santees. Before the Santees made this sale we owned the Pipe-Stone quarry, and the Santees virtually stole it and sold it. When the commission was sent out to negotiate in 1858 Struck by the Rees refused to sign the treaty to sell the land until the Pipe-Stone quarry was returned to the Yankton tribe. When the Government promised to give this back to the Yanktons, Struck by the Rees then signed the treaty. So the basis on which this treaty of 1858 was made was the return of the Pipe-Stone quarry. The United States bought back this land and gave it back to the Yanktons. It was said at this time that this should belong to us generation after generation, even should it descend to one man. This has been violated. We heard that a railway was to be run across the Pipe-Stone Reservation, but we thought, the land being ours, they would consult us before it was done: but instead of coming to us they went on to Washington and there got action passed authorizing this railway to cross the reservation, for a certain amount of money. After this we heard that a school building was to be built there. This was done in the same manner. There are also two white people living on this agency. Both have claims and are paying taxes. I have been at Pipe-Stone and have talked with the Santees there, and they claim that the Pipe-Stone quarry belongs to them. We have lost so much of our land that I am afraid the Santees will get possession of this. I met two

Santee clergymen and they told me that the Pipe-Stone was to be taken by the Government of the United States.

A man with a family does not usually love his oldest child most, but the youngest and most helpless. So it is with the Government with the Indians. Some are more advanced than others. Some are very weak and low. The Government as their father, has charge of them. If you deal with a man and find he is not truthful you do not wish to have any more dealings with him. We have made treaties with the Government and they have not kept all of the stipulations in these treaties, and I fear to make any more.

The council adjourned one hour for dinner. The council again convened at call of the crier and proceeded to discuss the subject under consideration.

FELIX BRUNOT. (President) This meeting must now come to order. Whichever way you want to talk get up now and say it.

COL. ADAMS. We have had this morning a talk from Mr. Henry Selwyn, and now I want to hear from others, and want you to talk freely.

FEATHER IN THE EAR. There are 20 men here of the committee of 24 appointed by our tribe, and beside them 10 men appointed to keep order. My friends, these inquiries you have been making, are you really in earnest? (People, "Yes,") I am glad to hear it. I think there is always too much speaking. We get confused when there is so much talking. Whatever our committee say, we Indians are willing to follow. Mr. Felix Brunot has been appointed chairman of this committee to represent the

tribe, but has not spoken. Yesterday an old man got up and began to speak and he was not wanted. To-day we have two old men whom we want to hear from.

CHARLES MORGAN. There has been appointed a committee who are to receive any instructions from the commissioners on the subject. It is their duty to do this as the people wish. It was said at the time this committee was appointed that they should confer with the commissioners, and when they reached any understanding they would then consult the people. If the people were pleased with this contract or treaty, the committee should return to the commissioners and the treaty should be signed. (How!) I think there may be a member of this committee who is not of the same mind as the others. There may be difference of opinion among the members. I heard that one of the members originally appointed has been dismissed, and so there seemed to be some such trouble. I think any man who has a home and is the head of a family should have a right to talk on this floor. There is a man appointed to speak this afternoon on this subject, and I want him to come forward. The members of this tribe, outside of the committee, held a meeting the other night and I was invited there. They decided to look into this matter. They have done so and appointed a man to speak. I do not like the way they have been conducting this meeting. A question would be put and the Indians gave their consent by saying "how," and that is the end of it. It seems that parties have refused to have others than the members of the committee speak.

PETE ST. PIERRE. My friends, there are three commissioners here asking for the sale of your land. They

have been here nearly two months. Whatever propositions they had to talk of you have heard. They have put two questions to you: Will you sell your land or will you not sell your land? We have been thinking about these two questions, and I think the people ought to give their answer to-day. I think we have studied over this question many days and nights now. I think the people here have some confidence in me or else they would not have appointed me a member of the committee. (How!) This land should not be sold and the commissioners should leave here without arranging for the sale of the land. (How!) If we answer them direct I think it would be best. (How!) I do not think when we have already made up our minds not to sell, that we should keep these commissioners here longer by not making known the decision we have come to. Another commission will probably be sent out to confer for the purchase of our land. This will not be the only one sent to us.

We have already sold a large tract of land and received a very small amount for it. For the sale of this small tract, we will not get enough to make us rich. (How!) I am in favor of holding this land and not selling it for the coming sixteen years. Probably after this commission returns to Washington, they will send another at some future time. If these should fail, others will follow them. I think we ought to come to some conclusion to-day; for, although we may call a meeting of the entire tribe, we will not get them here. (How!) I am in favor of having those parties who are in favor of selling this land rise and step out. (How!)

WILLIAM T. SELWYN. The man who spoke before this last, Mr. Charles Morgan, referred to a person who

was to speak in behalf of the parties outside. There have come to me 40 or 50 young men outside of this committee and desired me to speak.

This is an important affair and we should not go at it as children would. We should think about it first and come to a conclusion afterwards. I desire to state that I have nothing in particular to say in favor of the committee or those outside of it. I wish to make these remarks as general as possible. If we come to a conclusion that we will, or will not, gain by making this sale I will say so. Seven hundred dollars was appropriated last fall to pay the expenses of a party from here to Washington. It was stated by the people here that it was not the right time to go just then, as the allotments had not been completed; but if they waited until the completion of the allotments then they could treat for the sale of the surplus land. I think these three commissioners have not come out here simply because the Government wanted, but because you asked them to come.

It was stated well this morning that we gained nothing by the treaty of 1858. The reason of this is because there were not enough young men educated at that time to prevent it. I think we should not in any way charge the violation of that treaty to these commissioners. I think that treaty has no connection whatever with this matter. Some will probably remember the words of this treaty. There are three of you here who were present at that council. We have Mr. Charles Picotte here who was chairman of the committee who signed the treaty. When the chiefs and chairman went on to Washington to sign the treaty, they put in these words that the land should be

surveyed, and allotted in severalty, but we have overlooked this clause until quite recently. This same law is also incorporated in the Dawes bill, which was passed February 8, 1887. I have been to their agencies where they have been negotiating for the sale of lands, and noticed that they gave entire freedom to all the members of the tribe to speak. If I wanted to shut the mouths of several people and keep them shut, I would not have the power and do not desire it. I say this on account of some remarks made yesterday. I understand some of the laws by which treaties are made, and I can also see if certain propositions or laws would injure me or any other member of the tribe. When the commission came, the people appointed this committee. When this committee was appointed by the tribe and had a meeting, they set about gathering matter which they wished incorporated in the treaty should one be made. I do not know that the committee had the power to act in any way as others have done by going to Washington. The committee has had meetings and in many cases sat up all night, and gone home in daylight, and whatever we have thought and considered, incorporated in propositions. I have one copy of them in my pocket, being one of the secretaries, and Henry Lyman has another copy of them. We called a meeting of the tribe on the 11th of October. There we read over these propositions to the people, which we had written out for the commissioners, and the people gave their consent to them and also the authority to the committee to change any of these propositions if they desired to. I should not stand here and speak in favor of coming to any conclusion where there are so few members of the tribe here: but the young men have asked me to - those

outside of the committee – and now will speak of some general things.

Is there anyone here knows if this tribe is self-supporting and not in direct charge of the United States? You all know almost all of you here are owing debts either here on the agency or off. As I said, you are all owing so many debts. Why is it we come and stand around the agency office and beg for farm implements: and whenever a man comes from Washington are ready to bow down and worship him. It is it on account of the poor and miserable condition we are in? One thing we should be grateful and thankful for, and that is the schools. There are some very kind superintendents who are excellent teachers. But the outside wants of the tribe are very many. I will make just one more statement. I desire that this form submitted to the committee be read here before the people, that they may understand it. It was read to the people down below here, but think it should be read here again. Often laws affecting Indians are made without their knowledge or consent at Washington and are sent out here for them to be governed by. Of course we know there are some white people interested in the Indians: but when I was in Washington I went into the visitors' gallery at the House of Representatives, and while I was there they lead a discussion regarding the Indians and used very severe language regarding them; and in my observation I have found their friends far less in number than their enemies. If at any future time laws are made at Washington affecting the Indians, without their knowledge or consent and are sent out for them to be governed by, they should be disregarded; and if anyone is opposed to these laws I am one of them. The fact

that we can incorporate certain propositions in this treaty I think is a great advantage. I think these propositions and the form should be read at this time before the people. Furthermore we have the price which we have decided on – the lowest price at which we should sell. If I should engage in any affair that would afterwards show that I tried to deceive or defraud the people, they will lay it against me as long as I live in the tribe. I think this form of treaty should be read to the people and also the propositions. Then put the question to the people and demand an answer at some future meeting. I want to say more, but this is enough.

WILLIAM BEAN, SR. I have risen to speak, but before rising I felt very sad. All the white people know who created the earth. I believe the Creator made this earth. Maybe if He made the earth then no one but Himself should inherit it. Many years ago when the whites first came across the ocean and landed there were not many, but increased in numbers and soon surpassed our people in numbers. When there were a great many white people they elected a President. Ever since the Government was established our lands have been taken from us step by step. You have taken lands from other Indians and have now reached us again. You have asked us to sell our lands, but it might be like the treaty of 1831 when we sold land extending from the Big Sioux to the Otto rivers. We have never been fully compensated for this. The land between the Des Moines River and the Sioux has been sold. We have been treated in the same manner as many other Indians. When all their lands are taken from them they are sent to Indian territory. Two years ago, at Rosebud Agency, there were some old men

starved to death. By this starvation, you white people have caused many deaths. Now the Creator has given you white people education whereby you have gained much: the Creator has not given the Indians any wisdom so they can not accomplish anything. I spoke before about the boundaries, I would like to have you commissioners consider what there is that you can see in which we are better off, although we have given a great portion of our lands to the Great Father. A great many of you white people are seeking positions and on account of this the Indians are getting poorer.

I am going to refer to a certain thing. Struck by the Rees has sold a great portion of our reservation. On part of this land was built the town of Sioux Falls, and that city is now worth about \$10,000,000. They get their coal oil, which they ship all over the State. The Yanktons were not benefited by the making of this treaty of 1858. I do not know what my people will depend upon, although in past times no old claims have been looked up. Now, you white people have settled all over this country. When Congress made any laws or treaties it seemed as if ours were not to be depended upon, and so our people are getting poorer. The name of the Yanktons is not a bad name; they have done no bad thing to make it so, so I can stand up and talk like a man. I hope the President will try and help these people. In past times we have served the Government just as a favor, and I hope the Government will favor us, too. On account of these people doing good and behaving, you do not help them, and so they are going down all the time.

We have sent a man, who was here to do business, with authority to take care of certain claims, on to Washington, and I hope you commissioners will help him all you can to get those claims. Now, I hope, my friends, you will do all you can for these people: but, at the same time, you will have to go without making any treaty this time. (How!)

JANDRAN. We all know that the young people gathered here are poor. Whenever I have occasion to speak to young men gathered here I generally advise them to go and start on lands and farm. I have a few words to say. I will refer to those lands Mr. William Bean spoke of in Iowa, and to those unceded lands, and then to the Pipestone Reservation. All these claims should be settled first before the commissioners negotiate for these lands. This does not depend on the commission, but desire that they be investigated first and then confer for selling our lands.

WHITE SWAN. My friends, before going any further, I should like to point one thing for you to see. Sometime ago I went to Washington and shook hands with the President. Shortly after that our agent, Mr. Conger, had a friend who has informed us of something about this land down in Iowa, and I have put that in my care and kept it there ever since. My friends, I wish you would look up this old book which this friend read to us from. He told us this: When your treaty expires then you still have to depend on this certain tract of land down here. This tract lies between the Big Sioux and Des Moines rivers. The length of a long mile is just as far as you can see a horse with the naked eye, and that is about 27 miles. Now the white people have taken possession of

this tract of land without having bought it. What I refer to is this land in Iowa. We will depend upon it hereafter.

I am going to tell you now what I mean by looking up this old book. At the time when the father of the speaker before the last (William Bean, Sr.) was here as agent, he seemed to feel with us. Also at that time there was a man who was supposed to be a farmer. I do not know his English name: his Indian name was "Flat Foot." When that land deal was made is about sixty-three years ago. We would like to have you see to it. We had an old chief then whose name was "Mosquito," who had a copy of the treaty, but that copy was lost. Ever since, up to the present time, the Great Father has deceived us in many payments. I would like to have you inform the Commissioner of Indian Affairs to have him look this matter up, whether you succeed in accomplishing anything or not. My friends, you come here to negotiate for the sale of these surplus land, but it will be very hard to do so, as we have all these matters to be looked up first. (How!) My friends, I feel like laying many important matters before you, but as you are here only to ask certain questions, I will not do so. My friends, I hope you will go away without making any treaty.

FEATHER IN THE EAR. I have a few remarks to make and would then move to adjourn as the sun is getting low. The last treaty was made by half-bloods and they had special consideration. I do not wish in future any half-bloods to make anything by having their lands set apart separately from the Indians. (How!) When a rich man can not claim any place as home he is really very poor: but a man who has a home is rich although he has

no riches. If a boy has a home he is happy, and I want to feel like that boy.

JOHN OMAHA. I am one of the members of the committee, and I have, therefore, a right to speak like the others. I have faithfully listened to all of these wise men talk to-day. It strikes me that they have made a few mistakes in what they have said. Everyone has made reference to the treaty of 1858. I can answer that myself. At the time the treaty was made in 1858 the people who went to Washington were perfectly ignorant and were likely to make things like that. Now in regard to things. Now you people who are seated here in this crowd know that if I knew anything by which you would be benefited, I would never attempt to push you away from it. (How!) Now you old people here, whenever we young men come to anything good, and you see anything by which we would be benefited, you seem to be always binding our mouths and holding them tight. When I said I was wondering at your speeches today, I meant there are many in favor of disposing of the land; but you old people are always trying to hold us back. Now if you would do it, I consider it would be much of a gain. I know you all and have been in all of your houses. When I go to them, I see you have hardly any furniture in them. My friends, therefore, I wish you would consider for yourselves. These people who have spoken have expressed their wishes. I have a right to and wish you to do the same.

Now, the young men of my age and a little older than myself know this as I do, that if we do make this treaty, we will be benefited by it, but they simply want to say they do not wish to make it. If you, my friends, would not say this it would go better. When the commissioners first

came here and put the question whether we wanted to sell the land or not, we should have then said no, if we did not want to, and they would have gone home. It is simply because you want to make a treaty that you have put it off from time to time. Now, my friends, I want you to listen to me. I am in favor of disposing of the surplus lands. Now, sometime ago we had a general council on the hill-side, where we talked of this business. There was a certain young man by the name of Noisy Cloud, and he was the only young man who favored the selling of the land, but they all laughed at him; and you can laugh at me now. This is what I want and I wished to say so plainly and I have done so. Some time ago these old people said we had sold some of our land, and Running Bull in particular said this, and that we had no benefit from it. I am going to make another remark this way and this is the last. Now, in those days these old people could not even count their fingers as high as five. Now, we young men can take a pencil and put some figures down and do some little sums; and the treaty we would make would be better than the one made by these old people.

JOHN GASSMAN. I am standing here in the center, the Indians on one side and the commissioners on the other, and I think they can all hear me. We have heard Mr. Henry Selwyn, and he compared these people and the Government to a certain man who took off his overcoat and gave it to his son and froze to death. A member of the commission has been on the floor and spoke to us. Mr. William Selywn has also spoken. These last two speakers, I wonder why it is that they virtually slap themselves in the face. I have no great knowledge by which to be guided, but I am guided by my conscience

and will be guided by it to my death. It is not morally right to deceive ourselves; when they do so they take their fists and beat themselves on the head. We have certainly delayed this matter, but it was because these young and old men could not get certain answers to consider; and also one of the commissioners was away for a long time. One of the speakers spoke of certain propositions. These were talked over and decided upon at a meeting at William Bean's and reconsidered at a meeting at Eugene Brunot's. I think you remember what these were and have them in your head. It is because these people are peaceable that the whites have imposed upon them. The members of the committee remember that at that meeting we decided we should not sell the surplus land; and we still hold to this decision although several have gotten up and spoken in favor of selling.

JUMPING THUNDER. Young people, I desire to state here before you something I have done in my life. This committee appointed by the tribe have certain propositions which they have submitted to you. Among these propositions are many claims. When these claims are settled, then it will be time to consider the sale of the lands. You have heard what these young men have said, and their propositions. I went with "Struck by the Rees: and in this treaty it was stated payment should be made in gold. These payments are appropriated for school purposes, maintaining the agency, the blacksmith shop, and other expenses at the agency. Some is used for these purposes and some for annuities. It was stipulated in this treaty that so long as it lasted you should maintain schools. I see the benefit derived from schools. I notice the young people that can talk English, and it makes my

heart glad to hear them. As some others have stated, when these claims are looked up and satisfactorily settled, then we will confer for the sale of our lands.

IRON BULL. It is pretty near sundown, and time to go to bed. That this business has been going on for nearly two months is owing to the absence of Col. Cole. I am standing here and think I have just as much right to say things as the rest of them. I consider myself almost dead. Last Wednesday I had hemorrhage. There were 24 men appointed as a committee, and another 10 men appointed to keep order and look after them, and as I am one of them will speak of several things. You people had better keep your seats, for if you do not look out these commissioners will try and tramp you down. I want to say something. I hope you commissioners will not take it as an offense. It is in connection with the Government, not with you. My friends, commissions appointed to different tribes to make treaties and also members of Congress making laws do not do much, only sit with open mouths and thereby get fat. I want to state what I mean by getting fat. They swallow the land and the money does not come to the Indian, but goes to themselves. In doing this many times the Indians have no more land, and then they are sent to the Indian Territory where the bullfrogs are so bad. I have wondered after looking into this matter what these children who are at school will do if we sell this land. I sent my children to school and they took sick and died there. Now my friends, when you go back I wish you would tell the President that we do not care to dispose of our surplus land; and as it is growing late I am in favor of adjourning until some other time.

FELIX BRUNOT (chairman). I want you to all listen now. We will adjourn until next Monday when we will decide which way we will do. Many are not in favor now, and two are in favor of selling.

COMMISSIONER COLE. Before we separate tonight I want to say a word to you. It is unfortunate that the work of this commission was interrupted by that most terrible accident which happened to one of my family. But while I was absent I was not idle, but was interesting myself in the business of this treaty. Now, instead of complaining of the ills which you have borne in the past, let us come up like men and consider the business in hand. Let us take hold of this treaty matter in a business way. Let your wisest and best men give their attention with the commissioners to a treaty which will be for the very best interest of the Indians. We will give just as much attention to these old matters as our instruction will allow us to do in connection with this treaty. For many reasons which we can lay before you, now is the opportune time for you to make the sale of these lands. Now, I think, my friends, there is a clog in the wheels. I think the clog is lack of confidence in the commission which the Great Father has sent to you. I want to say to you that if this is the fact, let it be known.

If you do not have confidence in me tell me so, and I will immediately resign, that another man may be sent to treat with you. If you do not want any of these commissioners, tell them so, and let the Great Father send another commission to you at once. We, as a commission, do not want to stand in the way of your progress and if we are not satisfactory to you we will gladly get out of the way. While I was away I visited the Capital City, the

Indian Office, and other offices in the Department of the Interior. Your agent, who is a good man and works night and day in your interest, night and day, as I know myself, wrote me a long letter giving me all the facts he could, that I might work while in Washington in your interest. I there obtained information on many of the subjects which you discussed yesterday and to-day, and at the proper time will lay them before you.

Now, if I am your friend, I want to work for your interest, and want to work for your interest in this treaty we are trying to make. I think I am your friend. I feel that way; but if you do not think I am your friend, then I want you to send me away. Now, in conclusion, let us take hold of this matter as business men and push it to a final conclusion. I bid you good night.

The council then adjourned.

MONDAY, December 5, 1892

The council met pursuant to adjournment and was called to order at 2:30 p.m.

Commissioners all present: also the Indian committee of 24 with 10 moderators and chiefs, headmen, and members of the tribe to the number of about 112.

COL. ADAMS. There are some parties who expected to be here. I will call upon some of the young men to express their views while waiting for the other parties to arrive. We would like to hear from Mr. Robert Clarkson.

ROBERT CLARKSON. Five days ago last Saturday I listened to all the men at that time that made speeches. What they talked about was the sale of this land; that is,

whether they would sell it or not sell it. I have made up my mind not to listen to anything else, but use my own mind. I do not propose to use anyone else's mind, for that would not be just. I use my own mind. That is the reason why when I see anything which I do not think is right, I am right to say it. And when I see anything and it is not right, I will speak about it also. When this commission came sometime ago, they selected 24 men, and so they held a meeting and council. There was no one to speak before me. I spoke first, and this is what I said. I spoke of a treaty which was made with the United States Government

Then I spoke concerning this treaty. They were all my own ideas. I said we should not give away this land without considering it, but we must understand it and understand it thoroughly before we do it. That is why it would be right to sell the land, and I told the people so at that time. I thought so is the reason why I said so. All the young men now days understand about things. This is why they should consider this matter, and find out thoroughly whether we are right or wrong in selling. They thought of this in two ways. The way they said is this: We should sell this land to the United States. I said we should sell the land to the highest bidder. I have made up my mind in this way. I am looking toward all these young men and all the other young men belonging to other tribes. I said these young men were generally married but had no horses, no implements to work with. Even the old people were all hard up, poor, and had nothing. I said we must not do as they did when they made the treaty before. I said at that time when commissioners came to any tribe they generally had beer. The reason why I think

so, was because there were changes in certain things. This is why I think this is right. I said at that time when they made the old treaty they did not consider the matter, and did not know what they were doing at that time. They have come to these Indians to make a treaty and I tell them there should be certain clauses in the treaty which we should make ourselves, so as to make it binding.

I said at that time it was worth so much per acre. I said at that time if the land was sold to the highest bidder it would be best. Before the committee of 24 I got up and talked at that time and got up again a second time. There was a good deal of talk, but still we carried it. So, my friends, I will say it again. As to myself, if I thought there would be any trouble in it, or anything wrong, I would not get up and speak as I do. Mr. Adams got up here and gave consent to having it registered in a land office. I approve of it and like it. We should all think this way. If I wanted to be like other young men I would get up and want to be friendly to others outside. And if I wanted to be friendly to them I would get up and join those who do not approve of this. I would have lots of friends by doing that. It would be wrong for me to go and do something that would not benefit me. Saturday there was a minister got up and talked and said the Indians all lived in log houses, and that was why they were all sick with diseases and scrofula. That is why I think we should get up here and consider this matter thoroughly; so if by selling our surplus land we would be benefited by it. He said the other old treaty we did not see the money with our own eyes. That is why we should consider this matter and get cash money. He said this way again:

This pipestone quarry was ours; the President built a railway across without our consent. They had a chance to do it was the reason why they did it. The white man is always looking to make something, even though it is very small. That is the reason why I am afraid. White men see our surplus lands every day traveling through it. They have a lawyer sent to Congress to open up this reservation and surplus land. He is a rascal, that is why they did it. That is why the commission have come here, and have told you to do get up and name a price for your surplus land. This is a very small tract of land we have here, a young man, Mr. St. Pierre, says that is the reason why he wants to do keep it for sixteen years. I would not to do anything that would not benefit us. Mr. Bean got up and made a speech, and said this way that we would not gain anything by it. Mr. Frank Jandran got up and spoke in this way: He said that our tribe was very poor: I think he was right. That is why we should consider this matter and to do it right. So my friends and relations that is why I speak in this way. There are not many of us here. As for myself, I am able to do support myself whatever happened. I could get up and say I did not want to do sell this land for twenty or thirty years, for I am able to support myself. I know all of you here. Many of you have no horses and cattle. You have sometimes to borrow my horses and implements to do work with. This is why I know we should consider this matter, and to do what will benefit our tribe.

LOUIS ST. PIERRE. This is not the way to talk of this thing. There is not enough to consider it. There are not many here and it is for all the tribe to hear it. We should wait until more come.

COL. ADAMS. We would like to hear from Medicine Cow.

MEDICINE COW. If I make up my mind to say anything, I go there and say it. When I have anything to say I go to Washington to the Great Father and say it. I believe you are selected by Congress and sent out here to hold a council and make a treaty. That is why we employed a man who was sent out here to look after our interests. You have come here on purpose to say something, but you have not said it yet. I have always advised the tribe to work together, but there are three divisions. There are 3 young men about the same age. These young men are educated and I want them to talk with the commissioners. Near the Great Water there are many smart men and they have a great council. I advise my tribe to listen to them for they are smart. I see our agent has come in. That puts me in mind of the money he has in hand and I advised him to keep it, so if our tribe want to go to Washington they can go. He told me he had sent it to Washington. But I shall write to the Department and have them send it back again, \$700.

On the Laramy treaty five years were due us. The land is still there. We claim a piece of land in Iowa. This was taken by the whites without payment. The Great Father sent for me to come to Washington and I did not go. They sent me a trunk full of clothes. They came here with a paper for me to sign, and I would not sign it. They promised 100 horses and 100 cattle. Where are they? I have not seen them. Here are the 3 commissioners. Dr. Brown I will make president, Col. Cole, secretary of the interior, and Col. Adams, commissioner of Indian affairs. He is a good man, and we should do what he wishes.

This is a very important matter, and the President should know all about it. I can not go to Washington. That is why I want you to go and do all that is right. There are others to talk and you should talk too.

COL. ADAMS. You would like to hear from Mr. Charles Morgan.

CHARLES MORGAN. My friends, here is a question to be answered. I have been listening and will now say what I think. I was born and brought up here. I have made up my mind and will tell you. There are only a few here, and they are not ready to listen to it. I always like to listen, so I will know what they are talking about. I think some of my friends should get up and ready to talk of this subject. I think that is right. So I get up here before the whole tribe. I think we should adjourn. It is getting late. It is this way. I know I am one of the tribe. When I get up and make a speech in the tribe, some men get up and talk to me as if I was a foolish man. When I get up to speak a young man gets up and talks against me. I think we should adjourn, and I will not say anything more.

BAPTISTE LAMBERT. I second the motion of this young man to adjourn, and would say, too, that this is an important thing and the whole tribe should be here. It seems as if there was only one of us here. The only way we could do it right is to have the whole tribe here and decide what is best. The commissioners say they are ready to listen to anyone, and many of the tribe are making very poor speeches. It is being taken on paper, and if these are taken to Washington and looked over there, some will look very foolish. So I think they should wait until more come and have all the tribe here, and get

a few wiser men to get up and make speeches. We Indians know that take all of the brains of all the people here and they are not as much as these 3 commissioners.

COL. ADAMS. Before we adjourn Dr. Brown and Col. Cole will say something to you. I want to know when will be the best time to hold the next council?

BAPTISTE LAMBERT. Next Friday and Saturday, when all are here.

MEDICINE COW. We talk of something important. Some of these people come away from the western boundary. It is different from the white men. They get paid when they council. It is different with us Indians.

DR. BROWN. My friends, I want to talk to you for a few minutes. It has been said here several times that the commissioners have done no talking. The reason that the commissioners have not talked is not because they are not interested, but because they thought it best to let you people talk it over first. It was arranged that the commission should talk some to-day, but on account of there being very few here to-day thought it best to wait. We think if we went to work and explained it to you, we would have to do it all over again next Friday or whenever the council is set. The commission has a great many things to talk to you about. There have been a great many things said here which are wrong, and we want to show you why they are wrong. We have many things to tell you of the benefits to be derived by this people from the sale of the land. Now, my friends, I am not going to touch any of these points to-day, as you have asked the council to be adjourned on account of so few being here today. Now, when this council is adjourned, we want you to use all of

your interest to get all of your neighbors out. We want you all here. When you do come we promise to tell you something of interest. We want to meet you as our friends; and want to talk over and make everything plain. We want you then to consider and we will then do whatever you decide. Remember, in making your decision, that you must not expect of this commission things that are impossible for us to do, or that it would not be right for us to do. Now, my friends, we want you to stay right here until we decide when we want to see you again.

JOHN J. COLE. My Dakota friends, I am like the young man who went to see his girl. He said: "I did not come to see you this time but just came to say that I was coming to see you sometime." That is all of the story I heard; but will tell you what I think it meant. That he wanted his girl to be expecting him, and to meet him with a sweet smile. I have been trying to get you people to this way of thinking that we commissioners have not been sent to you to spy around or take advantage of you, but to make a fair deal. We have not been sent to you as enemies to try and take your land from you, but to negotiate for the purchase of your land. Now try and get yourselves in a frame of mind to come face to face with the question of selling your land. We can not take one step, and we can not do one thing unless all of your people agree to it. So do not be afraid. If we trade with you, you have to do half the trading. You have to do your part. We can do only our part, the part the Government instructed us to do. As my fellow commissioner has told you, we wish to do everything that is reasonable and right. I have promised to tell you at some future council

concerning these matters at Washington. Just as soon as there is an opportunity for me to do so, I will tell you what I have promised to tell you. Dr. Brown was to have talked to you to-day, but will next time. We will meet on Wednesday at 10 o'clock.

WILLIAM T. SELWYN. I second the motion of Mr. Baptiste Lambert to have the next council on Friday. That is the only time we could get a good meeting. They have been here two days. I think next Friday is the best day.

JOHN J. COLE. We have come a great distance to do this work and we must push and get through. We want to go home. Congress must ratify this treaty if we make it. I think it is very unwise to wait this whole week. I think we should meet next Wednesday morning.

COL. ADAMS. I have a word to say before adjourning. As my fellow commissioners have justly remarked the Government does not want to take any advantage of you in this trade. The Government is not like the boy with the coon. An old man went in the woods to cut down a tree. As the tree fell a coon jumped out. He caught it and wondered what he would do with it, kill it or take it home. Just then he saw 3 boys coming down the road. One was a white boy, 1 was an Indian, and 1 was a negro boy. The old man concluded to ask each a question, and the one whose answer was the best should have the coon. When they came up he asked the Indian boy if he was a Christian. The boy replied yes. He asked him why. The boy said because I want to go to the happy hunting grounds and live with the Great Father. He asked the negro boy if his father was a lawyer. The boy said no. He asked him why. The boy said his father did not want to

lie, because he wanted to go to Heaven. He turned to the white boy, and said: "The boy who gives the best answer to my questions shall have this coon. The old man was a great politician and Democrat. He said: "My boy, are you a Democrat or not?" The boy stuck his toe in the ground, and looked up at the old man and said: "I am anything in the world to get that coon." Now, I want you to understand that this is not the position of this Government in this matter. We want this coon, which is your surplus lands, but we want to get it honorably. We want to get it to your satisfaction and to the satisfaction of the Government which we represent. Now, my friends, on Wednesday at 10 o'clock we will hold a council and ask you to come; on Friday we will hold another council and want you to come; and on Saturday another and we want you to come; and by that time we hope to come to some understanding.

Council adjourned.

WILLIAM T. SELWAY, *Interpreter*,
MISS BESSIE M. JOHNSTON, *Stenographer*

WEDNESDAY, December 7, 1892

Council met pursuant to adjournment and was called to order by Col. Adams at 2:30 p.m., there not being enough Indians present earlier. Commissioners all present. Indians present, 56.

COL. ADAMS. My friends, the bad weather I see has kept very many of your people away. Notwithstanding this we hold this council, because we want you to understand that when we appoint a council it will surely be held, if there is not more than a dozen to hear and

confer with us. I advised all your people to be here every time we hold a council. Col. Cole has a word to say.

JOHN J. COLE. My friends, this is a very important business which we have been sent here to transact with you, but it looks to me as if you were not treating it so, and I fear you do not realize how much your future welfare depends upon what we are trying to do here. I want you to understand that we commissioners have left our homes and friends to come here and help you to do this business, and when we appoint a council we want you all to attend it. We appointed a council for to-day, and we have a warm room in which to hold it, and after announcing this meeting in our last council we sent couriers to all parts of the reservation to notify the people; and these couriers came back and told us that some of the people say they are busy fixing up their sheds, etc., and can not come, hence we have only a small part of your people here to-day. I want you to understand that we commissioners are making great sacrifices to come here to help you on this business. Dr. Brown is urgently asked to go where there is a large practice awaiting him, and while you are keeping him here some other doctor may step in and take the practice. Col. Adams has large business interests and a newspaper to attend to, and he is losing much money by being away. I have large business interests for myself and for others which demand my personal attention all the time, but particularly at this season of the year and my clerks inform me that I am losing heavily by being away from my business just at this time, and think that \$100 per day would not justify me to stay away. But I have undertaken this work and I will stay here till it is finished regardless of my loss. Now,

will you not all unite and take hold of this business and push it through? When a council is called we want everybody to come and give it their whole attention. Shall we have a big council on Friday? I want everyone who is here to come and bring everybody else with him. I want everyone who will come at 10 o'clock Friday, and who will try to bring as many as possible with him, to say "how." (General response of "How!")

DR. BROWN. I want to say a word to you before we adjourn. I hold some sticks in my hands. You see that I can break one of those sticks easily. I will call these three sticks commissioners. If Col. Cole works against Col. Adams and myself, or if I work against Col. Cole and Col. Adams, we are very weak, but if we all work together we are very strong. Now I will call these sticks the tribe. If you are all united, you are very strong; but one of you alone is very weak, and if you are divided into factions you are weak. You want to be all united.

JOHN J. COLE. It is strange how two minds run in the same channel and think the same thoughts. I worked out the same illustration which Dr. Brown has just given you, though he knew nothing about what I had done. I have two objects in saying what I do now. One is to call attention to the fact that this shows that Dr. Brown and Commissioner Cole are working shoulder to shoulder in this matter. The other reason is that I want to give you my illustration when I speak to you, and I do not want you to think that it was suggested to me by Dr. Brown's illustration, and I want you to know, too, that his illustration is also wholly original with him.

COL. ADAMS. I want you to understand that this whole commission wants to do something for our good, if you will let us do so. I, too, have some illustrations to make from nature, and hope to make it clear to you that you will be better off to sell your lands.

PETER ST. PIERRE. We have been sitting here listening to your talk, and we are very well pleased, but I think we had better adjourn, and I move we adjourn.

COL. ADAMS. Now I want to say to you that this council was called for to-day at 10 o'clock. I want it understood that when we call a council we will call it to order, and if we promise you a feast we will give it to you. We will keep our word in what we promise you, and you can rely upon that. This council, when adjourned, will be to 10 o'clock Friday morning. We want everyone to be here. There will be a feast for the tribe.

JOHN OMAHA seconded St. Pierre's motion and council adjourned.

WILLIAM T. SELWYN, *Interpreter*

FRIDAY, *December 9, 1892*

The council met pursuant to adjournment, but there being but small attendance of Indians, owing to stormy weather, it was postponed till afternoon, when it was called to order at 1:30 p.m. by Col. Adams.

The commissioners were all present, and the chiefs, headmen, and members of the tribe to the number of about 178.

The Indian committee of 24 having disagreed among themselves were present only as members of the tribe.

William T. Selwyn, interpreter: Miss Bessie M. Johnston, stenographer.

JOHN J. COLE. I want to say a word to you about the feast which has been promised you. We asked the Government to give us an appropriation to give you a reasonable number of feasts while counciling with you regarding the sale of the surplus land. When you have a feast it is to be understood that it is for the whole tribe as represented in this council. We expect to give enough for the people in attendance at the council; if two dozen, for two dozen; if two hundred, for two hundred, and the women and children you want to eat with you. There is another matter in connection with this feast. Commissioner Brown is responsible to the Government for the beef, coffee, and sugar issued for these feasts, and he is under heavy bond on account of everything used in this way. He must have the receipt of several people, representing the tribe, that it has been used for feasting. For that reason, he wishes you to appoint some one to receive it, and give him a receipt for it. Now, that there may be no more misunderstanding regarding the feasts, we want you to appoint some one to receive the supplies from Dr. Brown.

DR. BROWN. Tell me who is to represent you and I can see him about the receipts after the council.

WILLIAM BEAN, SR. We have only one sun, and it is nearly down, and then it will be night. I do not think it is best to have this feast to-night, but keep it until tomorrow. (How!)

DR. BROWN. My friends, I am glad to see so many of you out to this council. When I got up and saw the

snow flying in every direction and that it was so cloudy, I made up my mind we would not have a council. I am glad it has not been so. I am glad for two reasons: First, that I believe that such a turnout as we have to-day means that you are interested in what I have to say. I believe that this storm clearing away so is indicative of a better feeling. Up to this time you have done most all of the talking. Now the commissioners propose to talk to you. My brother commissioners have given me the honor of opening this council to-day. When you people realize that there are only three of us, and that we have to answer all the things brought up by you all, you must know we will have to talk to you for a long time. Consequently, if I talk to you for a long time you must be patient with me. I will not keep you longer than possible. I lived with you people for a long time. There is not a man in this room but knows me. You know that I know of no half way of doing things. It becomes necessary in my answers to absolutely deny some statements made in some speeches as false. I am not going to say a statement is false because you made them. I want you to understand, if one of my brother commissioners got up and made a statement that was not true, I would just as quickly get up and denounce his statement as false. So I want you to understand that I do not say so because I dislike you, but because some statements have been made which are not right.

On Friday and Saturday there was a great deal of talk that I do not propose to answer, because it has nothing to do with this question. You might just as well try to shoot a deer with a crooked stick as make a treaty by referring to things that are past. There is one thing a good way

back which I want to refer to, and that is what you people call your Iowa land. I find in the records of the Department the following regarding the treaty of the Sac and Fox and other people that made a treaty regarding your Iowa land. I find two places where the Yankton Indians are mentioned and I will read them to you. Article 4 is the first place where the Yankton Sioux are mentioned in this treaty. (This article was read.) The next place is article 6, which the interpreter will read to you. (Article 6 is read). Now, my friends, I have nothing to say to you about the treaty of 1831: that is, so far as what you received from it. I have no records here which will give me any light on the subject whatever. But I want to speak to you of the treaty of 1858. Now, I will give you the language of that treaty as it is given in this book, and have it interpreted: "That the Yankton Indians by that treaty relinquish to the United States all the lands owned or claimed by them, except this reservation, which is described there as consisting of 400,000 acres; that they also relinquish the United States from all claims growing out of any treaty made by themselves or any other Indians prior to that treaty." Now, my friends, that clause in the treaty of 1858 absolutely settles the treaty of 1831 and your Iowa claim.

Now I want to talk to you about the treaty of 1858. It has been said here that the treaty of 1858 has never been fulfilled to you people. I want to show you people that this treaty has been fulfilled, and more then fulfilled. There also seems to be a disposition on the part of the people here to reflect on the men who made this treaty, and I want to say to you, my friends, that while it may seem to you that you get a very small amount for it as you look back now, still you may search through all the

treaties on record and you will find that was the best treaty that had been made up to that time. I do not think it is right for you to take these old people, who have grown old and gray, and blame them for a treaty that was at the time it was made the best one ever made with an Indian. It was said here that it took six days to go across it with horses each way, but that you did not know just how much. If you had good horses you could go 50 miles a day. That would make it 300 miles. If your horses were poor you could not go over 25 miles a day: that would make it 150 miles. I simply want you to see that this is a very poor way of measuring land. The United States to-day is trying to take you and educate you so you can take a pencil and paper and estimate by using a geography how many acres there are in it. My friends, that you may have some idea how many acres there were in it, I will tell you. There were about 12,000,000 acres. This land was ceded by that treaty. You received in compensation \$1,650,000. Now, it is said here that, with the exception of four cash payments of \$5, \$4, and \$3 a head, you had had no cash payments from that treaty. Now I say that this treaty up to the present has been fulfilled. I am going to give you the figures to show you. The first article says it will protect you in peaceable possession of this reservation. Now my friends have you not always been protected?

The next article says you shall be paid \$1,650,000 which should be paid to you part in cash and part in annuities, as the President of the United States shall think best for you. You have had cash payments made to you,

and annuities. This year you receive your fourth installment of the \$15,000 a year which is the last clause of the treaty.

But, my friend, I want to ask you if this is all you received. I want to ask you if the Government gave you nothing but that \$15,000, which is what the treaty calls for. I want to ask you how you would be off to-day if this was all. Here is an appropriation of \$35,000, which is for sustenance, which is really given to you. This the treaty does not call for. It takes from \$18,000 to \$20,000 to maintain your schools, which is not mentioned in your treaty. The treaty for 1858 calls for schoolhouses, but does not provide for maintaining them. That is a gift of the people. All the wages paid your police, judges, farmers, is a gift and not a part of the treaty. Now, my friends, you get about \$60,000 not mentioned in your treaty at all. Now, my friends, I believe since you understand you will thank the Government for it. If one of your neighbors should borrow your horses and to-morrow should curse you for loaning them to him, you would not feel like loaning them to him again. Now, my friends, the Government would feel better if you thanked her for what you get and it is right for you to do so. Now it was said here that the treaty of 1831 said you would receive a steamboat load of goods every year. Now I want to say that the man who made that statement is a man for whom I have the warmest personal feeling. Now I do not believe that man lied. I think some one told him wrong. There is no such promise. I do not think any Indian would be such a fool as to make such a treaty. For the Government might get a very small steamboat that would not hold much more than a wagon full, and it might send a very large

steamboat that would hold more than all of your houses could.

That treaty set aside for your people a reservation with certain boundaries which it was supposed to contain 400,000 acres. When they came to survey it, they found it had 430,405 acres in it. It had 30,405 acres more than the Government agreed to let you have. Now it was said that a railway was run across the Pipestone Reservation, and that the company went to Washington and settled with them instead of coming to you. I was here when the money paid by that company was paid to you, \$1,700 - 99 cents a piece. I want to say to you, my friends, that this was the biggest price ever paid by a railroad for crossing one section of South Dakota. The government got more money for you than you could have gotten for yourselves. I have a quarter section in South Dakota, and I let the railroad go across it for nothing. The reason why was that it made a town a few miles from my place, and that made my place worth more. That railroad which crossed Pipestone Reservation made Pipestone City, and that makes the reservation worth more money. I say this to you, my friends, because the Government is always doing something for your good, and I want you to understand it. Now, in reference to this treaty, I want to say one thing more. What would you do if the Government gave you only that \$15,000? A good deal was said of the land sold by the treaty of 1858. It was said that there were lots of cities and railways on it. Now I want to say to you, my friends, that if that land had not been sold to the Government, if it had remained in the possession of you Indians, it would have no towns and railways on it. It would not be worth more than it was then. I was in a town in

Michigan and saw a lot rattled off for 50 cents. Before night the men who got it had sold it for \$1 and gotten gloriously drunk. I have lived long enough to see that lot sold for \$1,500. The reason it was worth so much more is because other people built large buildings all around it and at last some one wanted that lot very much. It is so with your land. If the white man had not bought it and built towns upon it, it would not be worth 25 cents per acre.

Now, my friends, there is another point which I wish to make. There is no government in the United States but the people. Every citizen in this country is a part of the Government. I am just as much a part of the Government as any other man. Now, just as soon as you sell your lands you will be a citizen and a part of this Government. Whatever will benefit us will benefit you.

My friend here, Mr. Henry Selwyn, said in his speech last Saturday that the Indian was better off before this treaty was made than he is now. Now, my friends, I know that he did not mean that. He could not mean it, and I will tell you why. The first time I ever saw you people here was when I came down from Armour with my horses on the 4th of July. When I got a few miles from here I saw miles and miles of the land white with your tepees. When I got a little closer I saw men racing horses. The men had on no clothing except the breechcloth and their bodies were painted; even their faces were painted. I saw you at your dance and all of your wild games. I said to myself, is it possible after all that has been done for them that they are only naked savages? After a little while your agent invited me to a little bower or booth, where you were to have your Fourth of July celebration.

There your agent introduced this same gentleman to me, Mr. Henry Selwyn. Your agent then introduced him as a gentleman who could speak to the people in the Dakota tongue.

Walter Arconge sat by me and interpreted his speech. And to say to you, my friends, that I was surprised when it was interpreted to me would be to say it very poorly. There that man stood before the people in citizens clothes, suitable to have worn in Congress, and in eloquent language told the people how Columbus discovered America; told them of the Declaration of Independence; the Revolutionary war, that freed us from the mother country. He took these people down little by little from the Declaration of Independence to the present time and showed them the progress made. He called their attention to the flag of our country as the emblem of freedom. In fact, he displayed a knowledge of the history of our country that would have put many a white man to shame. He told these people of Christ and the missionaries. I said to myself, these people are not savages. They are like boys playing horse. They have thrown off their civilization for one day and gone to their wild games, and to-morrow they will put on their civilized dress and ways. I was told Mr. Selwyn was a missionary and preacher here, and I thought he was the right man in the right place, and I want to say I think so now. I think he has been misinformed on many things he spoke of the other day. Before this treaty your people were uncivilized, and only lived to eat and ate to live. At night you did not know but before morning some enemy might rush down on you and kill many of your people Now, I

ask, what is your condition to-day? I want you to think if this treaty has not done you good.

I want to ask you, my friends, if it has not learned you to write and read, and many of your younger men to do for yourselves and farm. I want to ask if it was not taught you a religion that is of some value to you. It has made you people homes and taught you to take care of them. It has taught you how to take care of your children. It is easy for us to look back over the past and see only the bright side of things. We can look forward to the future and see only the bright side of things. Most of us when we look at the present see only the dark side. In looking back you see the excitement of the chase, the excitement and fascination of the wild life you led then. You forget that sometimes it was very cold and the snow was very deep, and you could not get out after the game you lived on and many starved. You forget how you were constantly on the move and that some of the old people had to be left behind because they could not keep up. You forget how many times your enemies came down upon you and took many of your lives. You forget these dark points. I want you people when you look at your condition to-day to see both sides. It was said in old times you had less disease and sickness, and that you were dying off very fast now. The first time the Yanktons were mentioned in history there were only 2,000 of them, but now you can keep records of the death and so do not forget them, and it seems to you to be greater on that account.

There are 262,000 acres of land allotted to you people. That averages about 500 acres to each family, some a little more and some less, according to the size of the family. One hundred acres is all any of you can work, and that

leaves 400 acres to rent. If you sell your surplus land no person can buy over 160 acres, so they will be glad to rent it of you. At only 25 cents that will give your tribe \$52,500 a year. Then you will have the interest money on that paid for your land. Not only that, my friends, but school-houses will be put up all over the agency, and your children can come home at night. They will be in school with white children and will learn more of the language and ways of the white man than in any other way.

I want to say to you, my friends, that it is just as impossible to stop the march of civilization as it is to stop a wave when it comes to the land. If all of the men on the earth combined together they could not stop it. They could delay it only a little while. The Government of the United States does not want you to stay out until it marches over you, but to join in it. One speaker said all the Indians together did not know as much nor have as many brains as the three commissioners. I want to say to you, my friends, that this statement is wrong. I see many men here who have just as good brains as any of these commissioners. If this commission, or any member of it, knows more than you it is because they have had better opportunities, and have made better use of these opportunities.

My friends, it is only a few hundred years ago that the white man was as uncivilized as you. Only a few centuries ago and one nation warred with another, and took what each other had. Only a few hundred years ago and a nation would not try to buy this land, but would go to war and take it from you. But we know now that this is wrong. Now, my friends, this commission stands between you and the Government. If you want to sell we want to

buy, and if you do not want to sell we do not want to buy. Now, my friends, if two members of this tribe should come to us with a piece of beef and you asked us to divide it for you, if we looked at the two men and saw one a great strong, well-looking man, and the other very poor and sick and looking as if half starved, it would be natural and right to give the one who was sick more than the other. Now, these commissioners realize that the Government is strong and well and your people are poor, and if we make this treaty we want to give you the biggest half. You must remember that you must not ask for us to give it all to you. That would not be right, and the Government would not let us do that. I believe if you make this treaty you will be able to build better houses, you can have better clothes and better horses, and be in every way better off. The time is past when you could stay in your present condition. I think I shall live to see many Indian men occupy prominent places, not only in the State, but in the nation. I want you people to come together as one people on the land question, forget factional interests, and decide whether you want to sell or not. The other day I gave you an illustration by a bundle of sticks. Col. Cole told you the same thought had come to him the night before and he had put it down. He took me to his room and showed it to me, and I hope he will give it to you as he had it.

There is no Indian on this reservation I have any hard feeling for. There may be possibly some of you that do not like me. If so, I am sorry, but I can not help it. Whether we ever make this treaty or not, I expect to come down every year and see you and shake hands with you. I am now going to stop and let Col. Cole talk to you.

JOHN J. COLE. My Dakota friends, I want to speak to you, and I want you to listen attentively to what I say and give it due consideration. I was not expecting to talk to you this afternoon, as Col. Adams expected to talk to you after Dr. Brown. But Col. Adams is suffering from a wound he received in the war, and is not able to talk to you.

Now, I see you people face to face, but somehow I do not seem to quite get at you. When I hold my handkerchief up before my face you can not see my features, and when you talk to me I seem a great way off. Now, I feel as if there was something between us when I talk to you. If I could get face to face with you I think I could convince you that I would do you a great good by helping to make this treaty between you and the Government. My friends, will you not remove this something which keeps us apart? Will you not come direct to me and let me come direct to you? Then let us sit down together and see which is the best way to do the business.

In talking to you this afternoon I can not follow out the course I had marked out. It would take too long. Therefore I must take up only one or two little matters and talk to you another day. In one of my talks to you I mentioned the illustration of a bundle of sticks, to which Dr. Brown has referred. I will give it to you some time.

I do not propose at this time to discuss the plan of sale; but as I suppose the tribe is not considering the question as to whether it is better to make a direct out-and-out sale of the whole of your surplus lands, at such fixed price as the Government may be willing to pay, or to cede these surplus lands to the Government in trust, to

be appraised and sold for your benefit. I deem it to be my duty to say to you that I think it would be better for you to make a direct sale, at a very low price, than to put them into the hands of the Government to be appraised and sold for you. My only object or interest in this matter is to make a treaty with you which will be worth more to you in its collateral advantages than all your surplus lands are worth. A treaty can be drawn that will be worth more than \$500,000 in money to this tribe, independent of the value of your surplus land, and I think that Congress will ratify such a treaty. Bear in mind that in this statement I do not include a price you may get for your surplus lands, and that whatever price may be agreed upon for these lands will be in addition to these advantages, which I think will be worth more than \$500,000 to you.

Your ideas are altogether too high in regard to the value of your surplus lands. We propose to buy all these lands, good, bad and indifferent, just as they come, and you know that some of them are of but little value, and you must take this into account in fixing the price on all of them. Some of these lands are beautiful, and sometime they will be very valuable; but they are not so valuable now as you may imagine them to be. You forget that the value of lands is determined by conditions, and that the conditions do not exist to make these lands valuable. The principal object of this treaty is to make all these lands valuable, both the allotted lands and the surplus lands.

The committee appointed to confer with the Cherokee Indians for ceding their lands has just made its report. I think their lands to be very valuable, more valuable than your land. Here is a clipping from Senator Perkiton's report: The Indians agree to sell their Strip for

\$1.50 per acre, or \$9,000,000 for 6,000,000 acres. Here is another commission which has just finished their work and sent in their report. They have reported that four bands of Pawnee Indians will sell their land for \$1.25 per acre. The Sisseton Reservation was purchased by the Government at \$2.50 per acre. This is the highest price which has ever been given. So you see your ideas of price are away up. Now, in dividing the piece of beef between you and the United States, as Dr. Brown has illustrated it to you, we will give you your choice. You can take hold of the horns and we of the tail, and we will cut it very close to the tail; or we will take hold of the horns and you of the tail and we will cut very close to the horns, and give you the biggest piece. We propose to do the very best Congress will allow us to do for you. But remember, as Dr. Brown said, you must not expect us to give you all.

The price you may get for your surplus lands is the smallest part of the benefit which you will derive from this treaty. I have said that the treaty itself, independent of the price of your surplus lands, will be worth more than \$500,000 to you. Let me see if I can not prove this to you. If some one would give you \$500,000 to keep you from making his treaty, you would have the \$500,000 in money and you would have all your lands, but you would not have the treaty. I will suppose that you can put the money in the United States Treasury and get 5 per cent interest on it. This would give you \$25,000 per year in interest. You sometimes rent your vacant lands at \$2 per 40 acres, or 5 cents per acre. Sometimes you get \$4 per 40 acres or 10 cents per acre. I want to make this just as fair as I can, so I will suppose that you can rent all your land, except what you want to cultivate, and that

you can get 10 cents per acre for it. I will suppose that your people open up 500 farms, averaging 124 acres each. That will take 62,000 acres, and will leave you 200,000 acres of allotted lands unused, which you can rent. You also have your 168,000 acres of surplus land, making 368,000 acres of unused lands to rent. This large body of land rented at 10 cents per acre would bring you \$36,800 per annum. Certainly you will all agree that this is the very best that you can possibly hope to do with these lands, and this with the interest on the \$500,000 given you to keep you from making this treaty would give you an annual income of \$61,800.

We will now suppose that you come to an agreement with the commission in regard to the value of your surplus lands and make the treaty. You have 262,000 acres of allotted lands, which we will suppose to be worth \$2.50 per acre in their present condition. Just as soon as a treaty is signed and ratified by Congress every acre of this land will be worth 20 per cent or one-fifth more. This, on 262,000 acres, makes an increase of \$131,000 as a clear gain to you. As this will be in the value of your lands, we will not count on getting any annual income from it. But when white settlers come in and buy these surplus lands, they can get only 160 acres for each family, and they will want more land to cultivate, and your 200,000 acres of unused allotted lands would then rent more readily for 50 cents per acre for cultivation than they will now at 10 cents per acre for grazing. Two hundred thousand acres of land, rented at 50 cents per acre, will bring you \$100,000 yearly.

The income from all your lands and from the \$500,000 was only \$61,800, which is \$38,200 less than the

annual income from your 200,000 acres of unused allotted lands after the surplus lands have been occupied by white people. So that if anyone wanted to keep you from making this treaty they would have to give you \$1,264,000 to put into the Treasury to make your annual income as large as it would be under the treaty, even if you got no pay for your surplus lands. This is but one item, and there are many other advantages of great value to you that would come from the treaty. I will not detain you longer now, but talk to you again some other time.

COL. ADAMS. You know I am not much of a hand to talk. I am going to tell you to-morrow what I think of it. The council will meet to-morrow at 10 o'clock. Have your committee appointed to come to Dr. Brown early to-morrow morning to get the beef to kill. So while we are in the council getting something for your heads, the people who are preparing your feast outside will get something ready for your stomach. This will be so you can stand what we say to you. The council is adjourned until 10 o'clock to-morrow morning.

SATURDAY, *December 10, 1892.*

The council met, pursuant to adjournment, though, owing to the limited attendance of Indians in the morning, the council was not called to order until 1:30 p.m., Commissioner Adams in the chair.

The commissioners were all present, and Indians were present to the number of about 195, the Indian committee of 24 being present as members of the tribe, William T. Selwyn, interpreter; David Zephier, assistant interpreter; Miss Bessie M. Johnston, stenographer.

Col. Foster opened the council with a few remarks, urging frankness of expression and harmony of action among the Indians.

JOHN J. COLE. My Dakota friends, I want, if possible, to come close to you this afternoon. I have come to you for a purpose, and I shall be very much disappointed if I do not accomplish successfully this purpose before I return. I have always been connected, more or less, with large business interests, in which others were interested as well as myself, and I am used to doing business where I have to look at both sides of the question. I once had a little piece of business to settle up which took much time and a great deal of hard work. After I got through with it I sat down to figure out how much interest I had in it. I, myself, had one-thirty-second part and the others had the other thirty-one parts: but while I was at it I worked as though the business were all mine. In my business there is a very strong rivalry. There is as much rivalry and contention as there can possibly be between men of business.

We will suppose, for instance, that this tribe of Indians have an interest in something in connection with another tribe; of course all this tribe will watch the other tribe very closely and endeavor to keep them from getting more than their just part. Now if any man among you could stand up and mediate between these two tribes and deal so justly with the other tribe and so fairly with his own that all would be satisfied you would be proud, would you not?

Now, in my business there are two parties contending with each other with might and main. I became the

mediator between the two parties, and at first both watched me very closely. The other party who were contending with ours for the business distrusted me at first, and kept a man at my elbow to watch me every minute. I could not write a sentence but what they scrutinized it very carefully to see if there was a word in it that would injure them. I was in this position for five years, and at the end of that time we had a council. One of the men in the faction opposed to us came in with this cane and said: "We have watched this man for five years, and have never found that he wrote one word which was not as fair to our side as to his own, and we want to present him with this cane to show our appreciation of his impartiality and fairness." Right here, on this side of the cane, are written the names of men who are engaged in the largest works of its kind in the world. I am proud of that cane, because it is a memento of the fact that the shrewdest men in that business recognized the fact that I could be as fair to the other side as to my own. On my way from Washington to this reservation we had a council with these same parties in Chicago. Now, I want you to bear in mind that our competitors in business are wise men, and men well skilled in looking after their business, and if I should seek to take any advantage of them it would be an easy matter for them to discover it and cast me down. I have said I was proud of that cane for what it represents, but I am prouder of this paper which I show to you for what it represents. Again, in that council in Chicago I was a middleman between those two factions. Both parties instructed me to draw up this instrument, in which both were interested. There are twenty pages of type-written matter. I sat down and dictated this matter

to a stenographer and had it written out. Now, I want you to understand I was sent there to represent my party. The other party, the same which gave me this cane, said; "Let Cole write that instrument; he is the best man to write it." Now, I want you to understand that this document is as much to us in our business as this treaty is to you and the Government of the United States. I could have written this in the interest of my own party, but I was chosen to represent both parties in writing this document, and so must be impartial. Suppose I had been so interested in my side that I could not have seen the other's interests. If I had written it in the interest of my party when it went to the council they would have thrown it out; but it was fair to both sides, and the council adopted it without the change of one word. I have told you this to show you that I am used to mediating between parties in important business, where I have to look out for the interests of both. Now, if I can once get at you people, once get you to know me, I think I can do you some good in this matter on which I have been sent to you. I think I can draw a treaty which will be equally satisfactory to the Government and to this tribe.

I have not had much to say to you since my return, for two reasons. First, I always want to have a good understanding of what I am going to talk about, and second, I always want to know the conditions under which I am talking. And I have not felt sure of either of these since I came back to you. I did not come here of my own accord, I did not ask to be sent here, but I was sent here by the great Secretary of the Interior because he thought I could do well the work he wanted done. When I came here you received me cordially: you seemed glad

to see me. I thought you were pleased because I had been sent to you. And I thought that you were my friends and that I could be your friend and that we could do this business quickly, to your advantage, and satisfactorily to the Government.

You all know the painful accident which called me away from here, and that I left on the saddest journey of my life. You all know with what a burden of grief I returned to you after laying away my beautiful boy. While standing by the bedside of my sick wife I received a letter from your agent, Col. Foster, saying that you came to him and expressed your sympathy for me in my great trouble. That touched my heart, and I said I will go back to those Indians and prove to them that I am worthy of their friendship and their sympathy by doing my best to protect their interest and advance their welfare.

When I came back many of you welcomed me warmly, and I hoped to take up the work of my commission and prosecute it successfully. But when I came to talk to you about the sale of your surplus lands I could see a change in you. I could see that there was something wrong. I could see that you did not want to talk about it. Then I was told most of you want to sell your surplus lands, but that you are dissatisfied about many things; that you have some old claims which you want fixed up; that some of you do not like the commissioners; that there are factions among you, and that what one faction wants the other faction opposes. Well, my friends, I am sorry for all this. I am sorry all of you do not like all the commissioners. I am sorry that all of you do not forget your fictional contentions and unite to advance the interests of the whole tribe. I suppose it would not be possible

for the President, through his Secretary, to send here three commissioners whom all of you would like. I do not like to indulge in self-praise, even when I praise two other men with myself, but I think the occasion will justify me in saying that you probably have as good a commission as you will ever get; and I think you should close your factional strife and make the best use of this commission. You should unite your full strength and go right to work with the commission to fix this whole matter up in the best way for the tribe and the best way for the government.

My friends, we have come to you from the Great Father, and he expects us to advise you for your good, and you doubtless expect us to tell you what we think will be best for you to do. I have asked the Great Spirit to guide me in this work. I have asked the Great Spirit to give me wisdom and show me how to make a treaty that will be fair for the Government and will be best for you - how to make a treaty that will benefit this tribe as long as you live, and make you a stronger and happier people. I have one rule by which my life is guided, and that is, "to go straight forward, without fear or favor, and do what my judgment dictates and what my conscience approves," and this rule will govern me in this business.

I have prepared this bundle of sticks and brought it here to illustrate a principle which should govern you in this matter and in all important matters that come before you. I will call this bundle of sticks the Yankton tribe of Dakota Indians. You see this bundle of sticks is bound together by a very strong band, and this makes the sticks very strong, so that I can not break them.

I will call this band the interests of the tribe, which should always bind you together. Now, I will remove this band, and you will see here there are smaller bundles, and I will call these the factions of the tribe. You see that each of these bundles is bound together by a band, which I will call the factional interests. This is the largest and strongest bundle, and I will call this the strongest faction; but see; I can break it. Now, you see it would be still easier for me to break the other bundles, for they are each weaker than the one I have broken. But I will not break them, as I wish to show you something more about them. I remove this band, and you see here a number of separate sticks, and I will call these the individual members of the tribe. You see that each stick has a band wound around it, which I will call self-interest, or individual interest. But this does not strengthen the stick, as it binds nothing to it, and I can break both the stick and band very easily. You see when the whole tribe was untied it could not be broken, and the tribal interests could not be destroyed nor injured, and that the factional interests and individual interests were also safe and uninjured. I would have you all bound together by the interests of the tribe. I would have you use your whole strength to do this work in the best way. I have said all this to try to make you understand us and to get your minds down to the important business before us.

The commissioners are now ready to make you an offer for your surplus lands. The Government will pay you \$600,000 for your surplus lands, amounting to about 168,000 acres; payments to be made on the terms of our instructions from the Department of the Interior. This is nearly \$3.60 per acre and is more than double what the

Cherokees have agreed to sell for. It is more than the Government paid for the Sisseton Reservation and is the highest price we have ever known the Government to offer. But Dr. Brown told you we would give you the big end of the piece of meat and we are trying to do it. This is more than we think these lands are fairly worth, and Congress may refuse to ratify a treaty on that basis; but we are very anxious to make this treaty, and if you agree to it we will do all we can to get Congress to ratify it.

In closing, after having submitted this proposition, I want to call your attention to the fact that these lands are now doing you no good. While these lands are unimproved you can not rent even your allotted lands which you can not cultivate. But the interest on the purchase will give you annually \$30,000 to use. Now, we want to have you consider this matter and give us an answer. I will now close and let Col. Adams talk to you.

Col. Adams: My friends, I want to tell you now, in a few words why I think you should sell this land. The eagle flies on the fact of the sun, looks at the sun, and his eye is not dimmed. When he has shown his strength, has been far above the clouds, and when the sun goes down behind the western hills, he, too, seeks his home high up among the mountain tops. Birds of the air have nests; the deer, the elk, and fox have places they call home, which they feel is better than elsewhere. For years and years the Indians had no home. He went from place to place, and his home was where his tepee was set up for the night. So the Government seeing he was not as well off as the birds; decided to make him a home. He was placed on a reservation that he might learn what a home was. After a while the Government allotted him land on which to

build him a home, to raise crops, that he might learn how much better it is to have one and provide for the long, cold winters. When the Government found how well the Indian liked to have a place called home she sent men like the members of this commission to buy the land the Indians did not want, that the white man might come in and settle near them so the Indian might see how they did and learn all about how to make a home and become like white men, who work to get money to make themselves and families better, to make them wise, to give them more knowledge, to keep disease from their bodies, and how to take care of their bodies.

You see I have here two stones. These stones are smooth. The way they became so was because they were in the water, in a stream, and in running down rubbed against each other. After a while, by constantly rubbing together, they became smooth. These two stones represent the white man. By constantly working among each other, and learning how others did, they became smooth. That is they got lots of money. You see here is another stone. It is not smooth. It has not been subjected to the water. This represents the Indian. Now, if we can bring the Indian and white man together and learn how they do, this stone which represents the Indian will after a while become as smooth as the others. The two which I showed you first. Suppose, now, I want to learn how to hunt deer. I can learn more from John Grayface or Running Bull than I can from any white man. Why? Because John Grayface and Running Bull have been taught that from the time they were papooses until they were men. If a herd of elk came up on the hill back of St. Paul's School I can learn from Medicine Cow or Feather in his Ear how

to get a shot at them. They know the habits of the elk, and could teach me how to get a shot at them. Why can they do this? Because they learned the habits of the elk from the time they were papooses until they were men. Then if I want to know anything about catching the elk, deer, or any other wild game I can come to any of these old men and learn.

Why? Because that was the way they had to make a living; to obtain what they had to eat and wear in the past. But if I wanted to learn to work on a farm, keep a store, run a wagon shop, harness shop, blacksmith shop, or any other business done by a white man, I will go to Mr. Lance, Mr. Tyler, Col. Cole, or Col. Foster to learn. Why? Because they learned that from the time they were papooses until they grew up to be men. The reason, then, why the Government wants you to live close to the white men is that, as the game is all gone, you may learn to get your food, clothing, and living as white men do; so you can improve your minds, and also improve the condition of your homes in many ways. Because the Government knows you can not live as your fathers did. Because there is no longer wild game to be found in sufficient quantities to give you a living. It is, therefore, to teach you how you can improve under this changed condition; how you can do best for yourselves in this new life which has come to you. Now, my friends, there are many ways in which you can be benefited by the sale of this land. My fellow-commissioners have told you of your being able to rent your land. As it is now every family averages 500 acres of land, and unless the head of the family is a cripple they can not rent it. Just as soon as you sell your surplus lands you become citizens of the United States and can rent

your lands. Now, my friends, this year I rented five forties, or 200 acres of land.

The man who rented that land of me agreed to plow it, put in seed, take care of the crop and give one-fourth of it. So when the crop was hauled to market I was to have one-fourth of it. He raised 4,000 bushels of wheat on that 200 acres. He sold it for 70 cents per bushel, or \$2,800. I got one-fourth of this, or \$700, as my share, and did not raise my hand except to take the money. The man did all of the work. Now, my friends, if I can do that with my land, can not you do the same with yours when you have a chance to do it. Here is the line of the Sisseton Reservation in my county. I live here, about 15 miles from the line of the Sisseton. Right here lives a friend of mine by the name of Vick, just outside the reservation line. Just inside of the line of reservation lives an Indian friend of mine by the name of Chunck. He has land which has plenty of grass upon it. Vick asked Chunck to let him cut grass on his land. He agreed to and Vick was to pay 50 cents per ton for all he cut. This man cut 150 tons of hay and paid Chunck \$75 for it. Chunck did not do anything but lie in the grass and see others work and got \$75. It was just as if Chunck had gone out into the middle of the road and picked it up. Now, my friends, what made the grass on Chunck's farm worth money? Because his tribe had sold their surplus land and he had become a citizen of the United States and could rent his land. This he could not do until the surplus land was sold to the Government. If this Indian can do this why can not you! You can not farm all your land. If you farm 100 or 150 acres that is as much as you will get done.

Now, if you rent 200 acres to a white man and he goes in with his plow and turns over the sod it is worth \$400 to you. Why! Because you could hire 200 acres of land plowed without your having to pay \$2 per acre, or \$400. Now, you can make an arrangement with him to farm it and give you one-fourth of the crop for rent of the land, and while he is doing this you are learning to farm from him. One of your speakers spoke of your selling your land in 1831 for 1 cent per acre. In 1803 the French, a white people, sold a great many million of dollars' worth of land to the United States. There have been eight or ten great States like South Dakota made out of it, and they sold this land to the Government for less than 1 cent per acre. The reason they gave so little for it was because it was like yours; because there were no people there to make farms on it and was not worth anything until there were. The fact is, my friends, the Government only seeks to benefit you in asking you to sell your surplus lands; to open up the way for you to learn the ways of the white man upon which you might depend in the future for your living; thus the Indian may learn how to take care of his own and be independent like the white man. Does it benefit the white man to buy this land from you? Only in this way, it gives him more land to work. Does it benefit the Government? Not 1 cent, for she will sell the land to white men for the same price she paid you. Then it must be for your good that you may learn this new way to get what you need to eat and wear and get a home; because the way of your fathers has failed you. Now, Dr. Brown told you in his speech that the Government was absolutely giving you, beside what it agreed in the treaty of 1858, \$60,000. Now, who pays this \$60,000? The white

man. The Government asked him to pay her so much tax money, each person – Col. Foster, Col. Cole, Dr. Brown, Dr. May – and every man is a citizen. Now, my friends, in conclusion, I want to say that I have been a friend to the Indian for a great many years; that I only want to do what will help them and better their condition, to show them the new way to make the home they want. I have finished.

FELIX BRUNOT: I want to speak about this affair which you people have put in our hands. It is on account of this affair that 34 men have stayed up night and day to consider this subject. I have noted all they have deliberated about in their meetings and remember it. I have followed carefully the conduct of all of these men up to the time the meeting came to an end. It is of this end that I am going to speak. At these meetings the points made by the commission have been told to the young men and they have talked over them. The final action they took was this. At a certain night the committee agreed to consider the question – that is, the sale or nonsale of the land – to these three commissioners. This is the committee which was appointed by the people to confer with the commissioners. They got up and asked the commission in the presence of the agent if they would recognize the authority of this committee as coming from the tribe. (How!) That this committee has done its duty to the commission and the tribe. A certain question was put to the commission and it was not answered. But we want to come out plainly, and if there is anything to say to come and any question to answer we want to do it. I do so today. (How!) At a meeting yesterday this question was put, whether we will sell our lands or not, and asked

them if they did not want to sell their land and they answered and said "How." But if the commission prefer to stay and talk more that is their own interest; but we have given our answer.

EUGENE BRUNOT: It was at such a meeting as this that the committee of 24 were appointed and 10 men to keep order. They have decided and desire to lay their answer before you. It is at the desire of the people that I stand on this floor. They have come to a final conclusion that they do not want to sell their land, and they have come to this conclusion. (How!) If I desired I could talk from now to 12 o'clock, but the business we have to do is just what I have said.

JOHN OMAHA: I desire to say one thing. I want to say it to the committee. I desire to state a fact in which the committee was engaged. One time the committee had a meeting up in my room over the police office. We were arranging to feast the people. I said at that time if every one would deposit one dollar bill we could do it. The committee was in favor of the proposition and it was agreed. So we bought a cow from Thomas Hunter and we called a meeting at the dance hall. The committee was there but I was very late. They were there at the time I arrived. This was the 14th day of October. It was decided by the committee that they would sell the land. They were discussing whether the price should be \$5 or \$6 an acre when I entered. They asked me the question and I said I was in favor of \$6 per acre. I do not know of a final decision which the committee came to since that time. That is what I wish to be known.

IRON BULL: My friend who has just spoken is mistaken. The committee at that time did not decide; but they asked what price they should consider, and were discussing whether the commission would offer a lower price than the Indians wanted. I do not want many words on the subject made by the speaker. It is very hard in any way to oppose the Government. We know that. Although our skin is dark we have a right in affairs with the Government. We have come to a decision and desire that you respect it. ("How!" and clapping.)

PETER ST. PIERRE: My friends, I have not much wisdom. We have some friends here. We have no will against them. (How!) The people appointed 24 young men as a committee. I am a member of that committee. The Government has appointed certain parties to act for it in affairs which we have with the Government. That Government has sent this commission for certain purposes and we know them. (How!) We have lost at these councils many days which we should have labored. (How!) The questions have been put to us and, I think, we should decide this matter at the present time. (How!) There is only one proper way to do this. There is a large crowd here, and I move that all who do not desire to sell their land step out of the room and some one count them. ("How!" and applause.) I entreat the commission to consider this. If we do not come to some conclusion now we will keep on having councils here until the spring comes and the grass is green. I think it is the proper thing that this be made the final meeting. (How!) If we had decided to sell the land, then it would be time to make the illustrations which you have made. One of the commission made mention of \$600,000 for the land. I do not

entertain that statement in my head at all. ("How!" and applause) This is our land and the price is entirely too small. (How!) I think some of this land is more valuable than that adjoining the reservation and should have as good a price. I desire that this business be settled now. (How!).

TOM NO. 1: My friends, I do not think you have any idea of a million. I have said that for a purpose. I have in the U.S. Treasury to my credit \$50, and I am waiting for this money to be paid me. There are others who have claims, and orphans. They should be paid. I am very glad to see these men dressed in citizens' clothes, as I am. On my part I have a great respect for white men. I depend upon the Government for my food; that is why I have mentioned the fact that I do not believe you have my idea of a million. I heard Dr. Brown speak yesterday and I was very glad. He said we received certain things from the Government for the sale of our land. The people desire a high price for this land. Whatever we have we want a good price for it, no matter how small. You know that this is a very small tract of land. You have been sent on by the Government as an interpreter, and I desire that you interpret to it that these people are poor. There is the scout money, and I desire the scout money, and so state it boldly. (How!) If the Government would support our agent we would be in better condition. The gratuitous gifts on the part of the Government I am enjoying. I have horses, cow, and oxen and harness. These gifts of the Government I am very thankful for. When you go to Washington I wish you would look up this scout money and send it to me. I have been appointed one of the ten to keep order. Now I am one of the scouts the Government

employed. I desired to make this speech, and I do not care whether they sell the land or not.

JOHN J. COLE: I want to come face to face with these people as the representative of the great Father and the Government of the United States. You are a strong people because you are better able to take care of yourselves and make bargains than any other tribe I know of. But you have not yet learned the ways of civilization and you are standing in your own light. I want you to understand that while you are many on this little reservation, while you make a strong force gathered together here, yet you are but a small factor as compared with the population of the great United States. Now, if possible, I want to bring you face to face with your present condition. One of your speakers said he thought you were better off forty years ago than at the present time. I do not agree with that statement and I do not believe that many of you do. If his statement were correct it should not have any weight in determining you against this treaty. Forty years ago this plain was covered with buffalo; there were deer and antelope and other wild game. Now I want you to show me where there is a buffalo. You might, perhaps, show me one single deer, but not game enough to live upon. You can not live forty years ago. There are some here who were living then, but they can not live over that time, and the conditions now are totally different from what they were then. Now, I want you to understand that you are absolutely dependent upon the Great Father today for a living. Let the Government send out instructions to your agent to cease to issue these rations, let the Government instruct your agent to cease to issue your clothes. (How!) Let the government instruct him to cease

to issue your supplies, let him take away the money to run your schools with, and I want to know what you would do. Everything you are wearing and eating is gratuity. Take all this away and throw this people wholly upon their own responsibility to take care of themselves, and what would be the result! Not one-fourth of your people could live through the winter, and when the grass grows again it would be nourished by the dust of all the balance of your noble tribe.

Some of your speakers have told me that they did not send for us and that we can go home. This was not said privately, but in open council, when they were supposed to speak for the tribe. You people signified to the Great Father that you wanted to sell your land. He did not send this commission to treat for the sale of your land until he understood that you wanted to sell. He did not send this commission until every one of you had a farm allotted, every man, woman, and child. So that every one of you, down to the smallest baby, has a home of their own on this reservation. And if you now send us away without giving this matter due consideration, and making a fair and reasonable offer for the sale of your surplus lands; will the Great Father think you are trifling with him? What can you do with these surplus lands? You have more land allotted to you than you can possibly use. There are not more than 500 heads of families on this reservation to open farms. Make 500 farms of 124 acres each and you will still have left of your allotted land 200,000 acres unused, and your surplus land is of no use to you unless you sell it. Now, if you indignantly send us back to Washington, what will the Great Father say of it! Is he likely to look favorable on such an action on your

part. Is this action on your part likely to make him ask Congress for an appropriation to get something for you to eat and wear! I would have you realize what you are doing. I want you to think of this before you send us away.

I want now to say just one word in regard to old claims. I told you two or three times that I wanted to tell you something, but you would not let me get at you. When I was in Washington I looked into this matter of scout money. Since I have come back the Government has sent the full history of the scout claims. I believe that I can speak for myself and my fellow commissioners and say that these scout claims should be paid. I believe that these scout claims are just. (How!) Now, why have these scout claims not been paid! Is it that the Government is too poor to pay its debts! Well, let us see. These claims amount to \$11,500. The Government takes from its bounty and pours into this tribe \$60,000 every year, so it can not be because it is too poor. Is it because the Government is not willing to pay these debts! No. I have been criticized for referring to your agent, but I am going to refer to him again. From the very first Col. Foster has said that this scout money should be paid. Now, suppose Col. Foster should draw a check and pay all of these scout claims. What would be the result! There are many men in Washington whose duty it is to inspect every account that comes into the department. They would ask by whose authority he paid these claims, and they would not approve of it, and Col Foster would have to pay them out of his own pocket. Now, my friends, you are face to face with a commission that can get these claims paid for you. If it is the will of the people we can make that a condition

of this treaty. Both of my fellow commissioners say they will give their consent to it. One word more, and I will not worry you longer. You have spoken of a great many things, and some are very far from business talk. The commission has come here and gotten well acquainted with you, and have found out the condition of things very thoroughly. We can use a great deal of influence for your good. We are willing to consider anything we have the power to grant. Now, let me counsel you to think over this matter and come back here next Tuesday at 2 o'clock and have a talk again. It will do no harm and may do a great deal of good.

COL. FOSTER: I do not suppose it is my business to advise you very much in this land business, but I do not feel that when I see a point that I want to make that I would like to say something. Now, for the first time, the commission has laid before you a definite proposition. Therefore it was a little premature to report against a proposition before it was made. The committee should meet and talk this matter over thoroughly and candidly. Now, there are on this reservation about 11,000 40-acre tracts. About 7,000 of these have been allotted. Now, the commissioners say they will give you \$600,000 for the 4,000 40-acre tracts. That will amount to about \$140 for each 40. Now, the interest on each 40 will be about \$7 a year. Now, each man, woman, and child would have about two and one-half 40's, which would give them about \$17.50 a year. This, with the rent you would get, would be very good. It seems to me that the \$17.50 would be more than you would realize from it in any other way. I think you should consider this proposition. Or, if the price does not suit you, do not refuse this proposition

outright. Try and get the commission to give you \$4 if you want it. When you sell a horse, a man says he will give you \$10 and you say "I want \$100," but some time you can get together on a price. Now, try and have the commissioners offer you more. Take this into consideration and do not be influenced by anything but the feeling of yourself and the good of the tribe.

JOHN J. COLE: That there may be no misunderstanding, I will say just now that if it is the desire of the tribe we will put into the agreement the settlement of the "scout claim."

PETER ST. PIERRE: My brothers, these commissioners are our friends. I do not wish to cross their opinion. You came here with a form, and probably it was laid down in that form of your instructions whether this should be considered. It was stated in the form that no undue force should be used to induce these Indians to come to a final decision. (How!) I think, my friend, Col. Cole, has made a mistake. The Indians do not understand illustrations, and his illustration has inspired fear on the part of the people. Write on to Washington and have our agent instructed to cease issuing clothes. It was to buy these very clothes that we sold our land in 1858. (How!) They are not real suits. They are gunny sacks smeared over with clay. (How!) But it should not be considered, because we bought these clothes. One thing I believe, and it is in regard to these rations. It is this ration system which is making our people poor. Because they depend entirely upon the rations they do not go to work. It is because they expect food from the Government that they do not earn it; and if that should be struck out, I am in favor of it. (How!) They say there are no buffalo and ask

what we would do if the Government ceases issuing to us entirely. Suppose the Government does! The young men would all exert themselves to realize from their farms more than from any buffaloes. These are my ideas. I wish to say one thing about our agent. He is here to help us on occasions of this kind. He should see that a majority vote of the people is respected. (How!) I do not think our agent considers this his duty. It is his work to protect us. A little while ago a boy was lost, and we had great confidence in our agent. He went there and attended to that and I think he was doing that then. This is our home, and the commission has come here to ask the sale of our land. I think it is only just, when we have given our final decision not to sell, that the commission should depart. (How!) They have been giving us good and sweet things here, and I have been listening to them. It has been said that we have no right to the Pipestone Reservation. In the Treaty of 1858 this Pipestone Reservation was made a condition of the treaty, and it was not signed until the Government bought it back and gave it to us who owned it. If we make a treaty ever so binding and sent it on to Washington, it is changed. I am opposed to negotiating at the present time. It has been decided on the part of the people that they have come to a final conclusion, and if our agent does not protect us in this, we will see that someone else does.

MEDICINE COW: One of the commissioners said we could put in what we desired in this treaty and about the scout claim. When one of the commissioners got up and broke those sticks it made me ashamed. It seems as if we are all broken like that. One mentioned \$600,000

which was given us. I think our claims against the Government would make \$600,000. Now, my friends, when I get up I like to speak.

FELIX BRUNOT: I think some of you people are getting a little excited. You should not speak so. These people are sent out from Washington and we should respect them. When they made the offer and asked us to consider it, did you wish to and signify by saying "How?" I wish to make a statement. I have been consulting with Col. Adams about what has been said. Our friends have come and asked for the sale of our surplus land. The question was put whether we desired to sell or not. It was declared by two parties that they desired to sell and by two that they did not.

Now, I think it should be decided at this meeting here. If by vote they desire to sell the land, they should come to the commission and say so, and if not, come and say so. If we then desire to sell the surplus land we can treat with the commission. If we do not want to sell and decide and say so, and then come and shake hands with the commission and they will go. When this price was mentioned by the commission I believe no one said "How!" And when Col. Foster got up and said we should consider this proposition, I believe no one gave consent by saying "How!" Did you? (No.) I think we should settle this matter now. Do you wish to consider what Col. Foster said and put the price of land up to \$20? I put the question: Do you want the people to decide the question now? (How!) I move all the people in favor of selling their land keep their seats, and those who do not want to sell get up and go outside. (How!)

Mr. Brunot's proposition took the council by surprise and caused some confusion, and there was some wrangling between those favoring and those opposing a sale.

JOHN J. COLE: This action will not decide anything. In calling the tribe together for this council no such action was proposed, but only an ordinary council. Our mission is to the Yankton tribe and it requires a majority of the adult male members of the tribe to decide this matter, and less than 200 people are here – much less than half the tribe. We can not recognize this action.

The people who were opposed went out, and the council was adjourned to meet again Tuesday afternoon.

TUESDAY, *December 13, 1892*

The council met pursuant to adjournment, and was called to order at 2 o'clock p.m. Commissioners all present. Col. Adams in the chair. Chiefs, headmen, and other Indians present to the number of about 126. William T. Selwyn, interpreter; David Zephier, assistant interpreter.

DR. BROWN. The commission have met today not to do much talking, but to offer you a plan of work. We believe this matter of making a treaty is too important to let it pass without getting it before you in a way that will enable you to fully understand it. As has been remarked by Col. Cole, there seems to be something between us and the tribe, and the plan which we have to suggest is one which I think will bring us nearer together. The commission has talked this matter over, and we believe that if your people would select about six of your number who would meet with the commission, that they and the commission could talk over some plan for a treaty that

would bring us nearer together than we are now. Of course, you understand that those six can not make a treaty. We only want to talk over some plan that will bring a treaty. I realize that there are factions in this tribe, and in selecting this six, if that is the number you agree upon, you should select them so that each faction would be represented in this plan, and so that all may be satisfied.

COL. ADAMS: Now, my friends, we would like to hear from you and see if the plan suggested by the commissioners meets with your approval, or we would be glad to hear from anyone in regard to this treaty.

NOT AFRAID OF THE PAWNEE: I have noted the expressions you have made to this people, and what I am going to ask you as a question is this: Have you commissioners seen me standing here alive? You came here to make a proposition for our surplus lands. I understand you to say that at a direct sale our people's land would be about \$3.60 per acre or a little more. Now I want to put this question before you commissioners. It is this: Could you make a change in the direct to pay more?

DR. BROWN: My friends, our commission would be glad to give you a big price for your lands, but the price offered you, we believe, is as high as Congress would ever ratify at a direct purchase.

JOHN OMAHA: I want you all to listen to what I have to say now, as you understand I am one of the parties who believe in the treaty, and it is just this way. I want to sell a horse that belongs to me. This horse is certainly mine and whatever I am willing to take for this horse, that I will state. When I am willing to sell this

horse to a certain party at a certain price, if this certain party is not willing to give me that price that I wanted, I would, of course, have the right to hold my horse. I have thought differently from the proposition that has been made by Commissioner Cole. I am one of the committee of the people here who divided up because we could not agree, and I am not in favor of this proposition. I have thought of this business in this way. I was in hopes on the first start that we, like men, would have good consultations with the commissioners and whatever they may do for our interest, that we might be able to talk freely with them so that they could make a favorable report. In thinking this way I have also been looking toward the interest of the people, and there may be some-one that would think that I am favoring this business without thinking about it. For many years in the past up to the present, white people have taught us how to get along in this world, and now we are glad to be able to see for ourselves, but it seems we are neglecting to turn our thoughts to it. I have said this once before. When any man has property he has a right to hold his own property at his own price.

It seems that these commissioners have come here with already established propositions of sale of surplus lands. When I said that I was in favor of disposing of surplus lands, I did not mean that I did so without considering. It should be right and you would be justified if any of you would get up and say I want to have the surplus land sold in this and that way. Now, I am standing before the commission here and am willing to say now that I want this thing to be done in this way. Now, my valuable friends, I am going to present my views on

this point. It is this: I desire to say that we ought to have our land sold under the appraisement; the lowest would be about \$6 per acre, and not to go any below that. Now, my friends, I request you to make a reply to my request, if you think this will benefit us. Now, for two months you have been trying to find out whether the people were willing to sell or not, and being one of the number I make this proposition to you in regard to these surplus lands. Now, we understand you in this way, that you commissioners have been sent out here by the President to make negotiations for our surplus lands; that before we do make a treaty that we and you have to understand each other thoroughly before we do anything. What I think about this would be to make a treaty, because of the interest of our people, and not of the money that was coming out of the sale of the land. I have also a certain proposition that I want to lay before you. It is this: As for myself, I am willing for all the surplus lands to be disposed of, except the unallotted lands along the Missouri River bottom (between the bluffs and the river), south from the first ridge from the Missouri River.

The reason why I make this proposition to hold the Missouri River bottom is that most of the unallotted lands in these bottoms are good for haying and that the people may make use of them in the future. It is my personal desire I put before the commission, although there may be a mistake in it. I desire that we should give our attention to this matter carefully and by degrees, as this is what the commission is here for. Now, I have said what I desire to say before this commission and before you people. Now, my friends, there may be some of you who would answer me for putting such expressions as this,

but I can not help it. Whether this treaty is or would be a benefit to us I am in favor of it. I would not care if anyone was trying to tramp me down for favoring this business. When anyone is trying to earn something or do something by which he would be benefited we must watch him carefully. In twenty-five years from now all our aged persons will have disappeared. When I say this I am looking toward the old. At the end of twenty-five years there will be a new generation; therefore I desire to see that these old persons shall enjoy the income of this treaty as well as the younger class of people here. There, for example, is an old man sitting on the workbench, and like many others who have no houses they go from house to house as their stopping places and when an old person has got any home to live in it is the same old log house. Not only the old men who are suffering from this and the widows and orphans are to be benefited, but also all the tribe. I have a great many things to say but the clerks are slow. My friends, you are all more or less connected with me by kinship, and as I said before, whatever we do in this business we want to be very careful and do it in the right way.

BATTES LAMBERT: I think this matter should have been left in the hands of the original committee of 24. It is not wise to change like children.

PETER ST. PIERRE: You commissioners offer us a different plan. I think the committee of 24 did their work and that the tribe supported them - that is, not to sell. I, you know, am opposed to sale; but we ought to meet these commissioners like men. I am against sale. My friends, this land belongs to us. If the price was higher I might be willing to consider it. I have my own view in

regard to price. I know that this commission nor Congress would approve it, and it is no use to state it. I think John Omaha has made some wise remarks. Now, if we appoint committee of six asked, I shall make some propositions to you commissioners and the people. It is time to leave and go home, and I move to adjourn.

JOHN J. COLE: You have asked the commission some questions and we want to answer you. You have asked about the price we would pay for your surplus lands, and we have already answered you as well as we could on that point. We have suggested that you appoint a committee of six to consult with the commission in determining the plan of sale, in drawing up an agreement, etc. I do not understand that this at all interferes with the committee of 24 you already have. The object of this small committee is to meet us and suggest the plan you want to adopt in selling these lands, the provisions you want to put in the agreement, etc. This committee will accomplish the very purpose you have enunciated in your speeches today. It will enable you people to agree with us on the plan and terms of sale. We have tried to make it as plain as we could, that we would allow you as much as the Government could afford to pay. If you cede your lands to be appraised and sold, you are to have all the money from that sale, and if your committee of six tells us the tribe would prefer that plan we will draw the agreement accordingly. There have been misunderstandings among you people and between your people and the commission. It is for the purpose of avoiding these misunderstandings and getting near to you that we suggest this small committee. A large body can not work out such details. It will do you no harm to have a committee to

confer with us. You have this matter all in your own hands, and we can make no treaty till you agree to it.

Some things I have said have been misunderstood. When a full council is called I will explain.

BATES LAMBERT: I second St. Pierre's motion to adjourn.

COL. ADAMS: The council is now adjourned, and the commission will withdraw and give you an opportunity to appoint the committee we have suggested.

Three members of the proposed committee were appointed by friends of the treaty, leaving the other three members to be appointed at another time, as a large faction of the tribe opposing the treaty had but few representatives in this meeting and it was desired that they should appoint the other three members.

SATURDAY, *December 17, 1892.*

A council of the whole tribe was called to further discuss the matter under consideration, couriers having been sent to all parts of the reservation to give notice of the council. Much effort had been made by the opposition to keep people away, but the chiefs, headmen, and other members of the tribe, to the number of about 200 were present; Col. Adams occupying the chair. William T. Selwyn, interpreter; Walter Arconge, assistant interpreter.

Council called to order at 1:30 p.m. in the presence of the full commission.

DR. BROWN: My friends, I lived with you for more than a year, and no man in this tribe ever knew Dr. Brown to say or do a thing that was not right. I generally say

what I mean and say it as hard as I can say it. I have been here now about three months on this treaty business and every day of that three months has been money out of my pocket and I have staid [sic] here for no other reason than because I was anxious to make a treaty with you people that would put you in a better condition. I have had no object except to do a good act for you. It seems that for a long time we have got farther and farther from this treaty, and it has been represented to my brother commissioners that Dr. Brown was in the way of this treaty. I believe that this statement is absolutely false. I believe that it is only an excuse urged by the men who wish to defeat this treaty. Still, it does not seem that we can make a treaty under present circumstances and it may be that my judgment is wrong and that I am really in the way, and in order that there may be nothing in the way of you people and the making of this treaty, I have sent my resignation to the Secretary of the Interior and will leave the other two members alone to do this work. I do not believe I am in the way; still I may be. I do not believe there is a man in this tribe, either friend or enemy, who does not know I would work as hard to get a good treaty for these people as any man in the United States.

I never knew my fellow commissioners until I met them here; but from the acquaintance I have had with them I am satisfied that they will work with all their might to make you people a good treaty, and one that will be a lasting benefit to you. If you let this opportunity pass you will regret it for many years to come. This is the one chance that you will have for many years to come that will enable you to make a treaty that is right and for your benefit. I want to say to these men who have been

my friends in this long fight, that you can do me no greater favor than to do all you can to make this treaty. It is natural, when a man feels that he has been wronged, that he should feel resentful; but any man who will let his personal feeling stand between a great good to a great number, is unworthy the name of man. I expect to leave this agency as soon as I hear from the Secretary, and I expect and hope that you people will go on and make this treaty, and if you do, and I should, in years to come, ever see you people, you will be ready to take me by the hand and say that Dr. Brown was one of the best friends you ever had. Now, friends, I want to say when I leave this agency, I am ready to take you all by the hand and bid you good-bye without any feeling of malice toward anyone of you, and if there is any man on this reservation who has any animosity toward me, it is only because he is such a contemptible man that he ought to be considered beneath the notice of decent people. Now I am done and will shake hands with your chiefs who sit next to me, to show my good will through these to the whole tribe.

JOHN J. COLE: My friends, I regret the step Dr. Brown has taken. In the short time I have worked with him I have found him a zealous and faithful worker in the interest of this tribe; still it may be he is acting in your interest in the step he is taking. In this act, as well as every other act of Dr. Brown since I first met him, I believe he is actuated by only the best and purest motives for your good. He has been a zealous worker for this treaty and this people, and by this act he has shown that his interest in this tribe is above his own interest. I wish to say to all what I have said to many of you in private. Dr. Brown, from the day I first met him, has worked in

season and out of season to get the best treaty he thought Congress would ratify. When people came to me with complaints I told them he was diligently working and was a good man for the tribe if Col. Adams and myself are worthy of the very high praise Dr. Brown has pronounced upon us, I hope by our acts we may be able to prove to you he told the truth. I said to you personally I have desired Dr. Brown should go with us to the end. I knew he was working faithfully and honestly to accomplish what we were sent here to do, and hence I discouraged any change; but Dr. Brown asked me to sit down and let him explain. He said to me in the interest of this treaty, as there was opposition to him, he had made up his mind to step aside so there would be no basis for any one to object to the treaty. I said, then if this is your deliberate purpose I will acquiesce in it. Now, I would urge you to remember what Dr. Brown has said to you and bend all your energies to secure this treaty.

COL. ADAMS: I am sorry Dr. Brown has decided to do this. In everything he has done and said since he has been here, it has always been for your good – for a treaty that would benefit you. Though he has been claimed to be in the way of this treaty, some of the men who have opposed him have come to him to go and see the sick members of their families and he has gone. Although you have a doctor of your own, in the goodness of his heart he has gone to see your sick people and thus shown, because he has asked no pay, his good will, his friendly interest in your welfare. I never met Dr. Brown till I met him at Armour on his way here, and since I have known him I have felt that his honesty of purpose was unquestioned, and his faithful and enterprising work in the

interest of this people was worthy of all praise. He could not be other than the earnest man he is if he tried. He has brought this earnestness to his work in the commission, and it has been all used in trying to promote your interests. Dr. Brown is an honest, earnest man, one who has your best good at heart, and his work here proves this. We appreciate the kindly mention he has made of the balance of the commission, and can assure him the feeling there expressed is reciprocal and mutual.

You, his friends, have heard what he has said; that he wanted to stay with the commission and help make this treaty. We hope you will come forward and continue to work with us with all your might, so that your people may rejoice in the benefits this treaty will bring.

DR. BROWN: I want to say, my friends, I wanted to withdraw two weeks ago, but my fellow commissioners opposed it. That was what I ought to have done, but Col. Cole insisted on my staying. Did I not!

JOHN J. COLE: I can make a short answer to that. I would not let him resign.

COL. ADAMS: I was as much opposed to it as Col. Cole, and was emphatic in refusing to consider it for a moment.

JOHN J. COLE: My Dakota friends, I have promised to tell you something about what I found out at Washington concerning your affairs. I met Gen. Morgan, Commissioner of Indian Affairs, and Mr. Belt, his assistant, and Maj. Larrabee, and Judge Allen, and others. All these men are in the Indian Office, and they are all your friends.

They know much about your people, and they are interested in your welfare, and told me many things that would be for your good. They told me much about the Pipe Stone Reservation, but said our commission could not do anything about that. The Supreme Court will have to decide that for you. The Supreme Court decides all important matters between white people and between the Government and the people. It decides matters between the States and between the States and the Government. When there is a dispute about a treaty, no one else can decide it, and when the Supreme Court decides this matter for you it will give you all the rights you have in the Pipe Stone Reservation under the treaty of 1858. While this commission can not settle that matter, we will do all we can to help you to protect your interests in the Pipe Stone Reservation.

They told me all about the scout claims, and I believe these claims are just, and if we make a treaty with you we will provide in the treaty for the payment of those claims.

They showed me the records about your Iowa land claim, and these show that you are wrong about that. Indian Office letter, June 8, 1882, to W.D.E. Andrus, U.S. Indian agent at Yankton Agency, in the treaty of July 15, 1830, proclaimed February 24, 1831, the Yankton and Santee bands of Sioux Indians assent to the treaty at St. Louis, October 13, 1830, and receive \$3,000, their part of the pay for the lands sold. This settles that matter, and shows that you have no just claim for lands in Iowa.

I told them that some of you claimed that the treaty of 1858 had not been faithfully lived up to by the Government. They told me that those who made that statement

were mistaken. Then they went to the books and made out this paper, which I hold in my hands and gave it to me. We have heard a great deal of complaint about this treaty of 1858. Many of your speakers have told us that the Government has not faithfully carried out that treaty.

Now, exactly the reverse of this is true. The Government has not only carried out that treaty faithfully, but it has also given to you as a free gift as much as was due you under the treaty. The paper contains the appropriations for subsistence and civilization only. The period covered is for twenty-three years - from 1871 to 1893, inclusive. For seven years, from 1872 to 1878, inclusive, the appropriation is made jointly with other appropriations; and the amount used for this tribe is not specified. One year the appropriation was \$25,000; for eight years the amount varied from \$40,000 to \$60,000, and during the past seven years it has been \$35,000 per annum. In the sixteen years you received \$650,000, and it is safe to estimate that you received \$285,000 during the seven years. This makes \$935,000 you have received for subsistence, etc. In addition to the \$35,000 which you are enjoying this year, the Government is giving you about \$25,000 for the support of your schools and other purposes.

The sums I have mentioned above do not include the appropriations for your schools, etc., and I estimate that the Government has paid out for your schools and other purposes, besides subsistence, at least, \$475,000. All this amounts to \$1,410,000, and is a free gift of the Government. Under the treaty of 1858 you have received to date \$1,410,000. So you see the Government has not only paid you all that was due under the treaty, but has also given you as much more.

I also saw the great Secretary of the Interior and had a talk with him about this business with you, and he instructed me to deal fairly with you and do what is for your good, but that I must also do what is fair and right for the United States. He is your friend and will support us in everything we do for your good. He is very anxious that we should make this treaty because he thinks it is for your interest to sell your surplus lands. There is much more information which I got at Washington which I would like to lay before you, but will not do so now.

I have been trying ever since my return to get at you people, and I shall keep trying until I find you and you find me. I think you do not quite comprehend your present situation. You have told us much about the ills you now suffer and the advantages of your former life. Well, this is natural. Men's hardships they forget when they are past; their achievements they remember. Their failures, their sufferings they bury with the dead past, but their deeds of valor they hand down to their children. So it seems to be with you. I have told you that you wear upon your shoulder large heads, and that a people with large heads are usually superior to those with smaller heads, and I may properly say that you feel the weight of your heads; but are you using them to the best advantage? You have been a great people; you have been a powerful people. You have felt your superiority and have held yourselves above other people around you. As hunters you were fleet of foot and sure of aim. As warriors you were brave and feared no enemy. To be a Sioux was an honor, and you were proud of your name and your fame. Thus was it with your fathers.

But conditions have changed, the country has changed from what it was when your fathers lived here. Then the forest and plains were wild and unbroken, and buffalo, elk, deer, antelope, and other game abounded, and the chase was the only means of securing a living, and self-protection was the only means of safety. But how different are the conditions at the present time. The white man has come, civilization has come; the wilderness has been reclaimed and you are now surrounded on all sides by farms and fields. Horses, cattle, sheep, hogs, and other domestic animals have taken the place of wild animals. Law and order reign and you live in the midst of peace, security, and plenty. This reservation alone proclaims the old time and the old conditions. But even here the means of your former mode of life have vanquished. The tide of civilization is as resistless as the tide of the ocean, and you have no choice but to accept it and live according to its methods or be destroyed by it. To accept it requires the sale of these surplus lands and the opening of this reservation to white settlement.

You were a great and powerful people when your abilities and energies were directed in harmony with the conditions which surrounded you, but the wave of civilization which swept over you found you unprepared for the new conditions and you became weak. In the ways of the white man your men became as boys, almost as babes. But your young men are growing up in harmony with these new conditions, and the same elements of character which made the Sioux great in times past will make him great again. But you must accept the new life wholly. You must break down the barriers and invite the white man with all the elements of civilization, that you young men

may have the same opportunities under the new conditions that your fathers had under the old. Then, if you are industrious and virtuous, you will again become a great people.

Now this is the matter which you have to decide, and we ask you to consider it well and decide wisely. We shall not complain because you deliberate long, but we hope you will take hold of this business in good earnest and help us to conclude it in a manner that will be satisfactory to you and to the Government. In this treaty the Great Father seeks your welfare, and there is no inducement for this commission to work more in the interest of the Government than of the Indian; therefore, we hope you will send us the small committee we have asked for, that we may confer with you through them and draw up a treaty which will be wholly satisfactory to you.

COL. ADAMS: We are informed that part of the tribe appointed three members of the committee we asked for. We hope the other part of the tribe will appoint three members to represent them. The commission desired to confer with this committee and we hope you will not delay in appointing it.

The council is now adjourned.

WEDNESDAY, *January 11, 1893*

A council was called at the dance house, near White Swan. Commissioners Cole and Adams present. Walter Arconge and Thomas Arconge, interpreters. Chief White Swan, with about 45 other Indians, present.

Commissioner Adams called the council to order at 3 p.m. and said: After our long ride through this severe

snow storm we are gratified to find nearly half a hundred of you here to consider this important business. We did not come here today to talk, but to show you what we have done, and Col. Cole will make some explanations and read to you the treaty which we have blocked out to submit to you for your consideration.

JOHN J. COLE: We are very much in earnest in our efforts to come to an agreement with you people for the sale of your surplus lands, and I assure you that it affords me great pleasure, on this stormy winter day, to take by the hand your old chief here, Mr. White Swan, and so many of his people. This shows that you, too, are in earnest in this matter.

We have made a rough draft of an agreement which we wish to read and explain to you. We have sent a copy of this agreement to Secretary Noble for his approval and criticism. It is our desire to secure a treaty which will be fair to you people and satisfactory to the Government, and in drawing up this agreement we have tried to provide in every way we can, for the future welfare of your people, and we hope our work will meet with your approval.

Mr. Cole referred to the recent purchases of Indian lands by the Government, from the Sissetons, from the Cherokees, and others, and showed that the commissioners were offering the Yanktons a larger price than was ever before paid for Indian lands. He then explained the principal provisions of the agreement so that when it would be read to them they would see the relation of each article to the whole agreement and have a better understanding of it.

He then read the agreement, article by article, explaining anything that was not fully understood by the Indians. At the conclusion of reading the agreement he read letters from Rev. John P. Williamson and Rev. Joseph W. Cook, indorsing the agreement in all its provisions including the price offered for the land.

COL. ADAMS: My friends, you have now heard the agreement read, and I will tell you in a few words why I think you should favor it. He then explained the many advantages that would accrue to the Indians from this agreement, and invited expressions of opinion from them.

White Swan and one or two others got up and expressed their gratification at having the treaty read to them and said they would consider the matter, though they did not talk very favorably.

The council was then adjourned.

FRIDAY, *January 13, 1893*

A council of the tribe had been appointed by the commissioners at White Swan, for Wednesday, January 11, and at Cold Spring for to-day, to read and explain the agreement, and they had sent couriers to all parts of the reservation to notify the people that they might suit their convenience in attending one or the other of these councils. The opposition was very active to prevent the Indians from attending councils, and owing to this fact and the stormy weather less than 50 Indians were present at the White Swan council.

Commissioners Cole and Adams, with Walter Aronge and Thomas Aronge as interpreters, had proceeded to Cold Spring to hold the council according to

appointment, but found that the opposition had so cleverly manipulated as to wholly defeat the holding of a council.

SATURDAY, *January 14, 1893*

Commissioner Cole had provided a feast for the chiefs and invited them to the agency mess-house to dine with him and discuss the treaty.

The chiefs were all present, Mr. Philip De Loria, chief of band 8, being represented by Peter Le Grand.

The chiefs were much pleased at the elegant dinner that was served, and expressed their appreciation of the attention thus shown to them.

After the last course had been served Commissioner Cole said: My friends, I am glad to be honored on this occasion by the presence of all the chiefs of the Yankton Indians. I have tried several times to get you all together but did not before succeed. I have had the pleasure of several small parties of your chiefs and headmen to dine with me and talk over this important work which has brought us together on this reservation, but I have made a special effort to honor your tribe today through you, their chiefs and representatives and their old interpreter here. I sent to St. Louis for these fine candies, etc., that each of you might taste the delicate luxuries which civilization brings, and take a box home to your families. These little brushes, which cost but 2½ cents each, are to illustrate the advantages which the white man can bring to you by cheapening the cost of useful articles.

To show the good will of the Government and of the commission toward your people, I sent for an elegant silk

muffler for each of their chiefs, but by a mistake they did not come with the other things, but have been sent by mail and I will give these to you at another time. The treaty book, which I have told you about in some of my previous talks, has come, and I am sure you will be pleased with it.

I have been much interested in the conversation we have had to-day. I find by the inquiry I have just made that Mr. Jumping Thunder is your oldest chief, age 76, and that my brother, Mah'piyato - who gave me his name on a previous occasion like this - is your youngest chief, age 60. The combined ages of your chiefs is 542 years; of the two commissioners present with you, 115 years; your interpreter, 60 years; total 717 years. Surely the wisdom of this combined experience should enable us to do this business greatly to the interest of your people.

I desire that you shall do the balance of the talking on this occasion, and we will now retire to the adjoining room, when I will ask you to respond to the following toasts:

Toast: We regret the absence of Mr. Philip de Loris, chief of band 8. Response by Mr. Peter Le Grand. Toast: The white man's mode of feasting as compared with the Indian mode. Response by Mah'peyato Itancon Tonka. Toast: The work of the Yankton Indian Commission. Response by Commissioner Adams. Toast: The interest of the Yankton Indians in selling their surplus lands under the treaty prepared. Response by Mr. Charles F. Picotte. The toasts were read and responded to with interest and animation, after which the council adjourned.

SATURDAY, January 21, 1893

Council met by appointment, couriers having been sent to all parts of the reservation to notify the tribe and to inform them that the commissioners would present an agreement for their signatures.

Commissioners Cole and Adams were present, and the chiefs, headmen, and other members of the tribe to the number of 200 Indians were also present. William P. Selwyn, Charles F. Picotte, Walter Arconge, and George Stricker, interpreters.

The council was called to order at 1:30 p.m. by commissioner Adams, who said; My friends, we have called you together this afternoon not for the purpose of talking, but to submit to you the work of this commission for your approval, but as your agent is present with us, and as he has manifested so much interest in this matter we wish to make an exception in his case and invite him to say a few words before we proceed with the regular work of the council

COL. FOSTER: I have been asked to say a word to you and I appreciate this privilege for I feel interested in the work you are doing. I have been familiar with the work of this commission and have heard the treaty read which they now propose to submit to you, and I think it is a very good treaty, and if you want to sell your surplus lands, it is probably as good an agreement as you will ever get. Under the treaty of 1858 you sold a vast tract of land for but littler more than you will get under this treaty for the small amount of surplus land which you have left. I think the provisions of this agreement are very favorable to you, and if the price is satisfactory, I see

no reason why you should not sign it. But you understand, of course, that you are not compelled to sign the treaty if you do not desire to do so. If you do not want to sell your lands, or if the price or terms of the treaty are not satisfactory to you, you have a perfect right to decline to sign and of these matters you are the best judges. You must do what you want to do, and what you think is for your best interest. The commission has been here a long time, and they have seemed to work hard and faithfully to consummate this matter, and if the agreement which they offer you is satisfactory to you, I hope you will sign it. I hope you will give careful attention to the reading of the treaty, and then let each one do as he thinks best.

JOHN J. COLE: My friends, we have called you together to-day not for talking but for action. We have drawn out an agreement in full, embodying all your demands as we understand the, and we now propose to read and interpret this treaty to you and then ask you to sign it; but before proceeding to read the treaty I wish to make some explanations which will enable you to understand it better when it is read and interpreted.

This treaty has been drawn with very great care to try to provide in the best way possible to tide you people over from the tribal condition to the condition of full citizens of the United States. Before drawing the treaty we consulted freely with your missionaries and other white friends, with your chiefs and your headmen, to try to find out what provisions the Indians want in this treaty, and what will be required for the best interest of the tribe. In drawing the treaty we have consulted with your missionaries almost daily, submitting to them our work and asking for their assistance in this matter. After

making a complete rough draft of the treaty, we on the 10th instant, submitted it to Secretary Nobel for his consideration and approval. I have here his dispatch of the 17th instant, reviewing the agreement in full and suggesting some changes which he desired as to make in it. These changes we have made, and the agreement as we now present it to you is exactly in accordance with his suggestions, and as fully approved by him. In his dispatch he says: "The \$600,000 consideration offered is deemed sufficient to secure full and complete relinquishment of surplus lands to the United States. The provisions of section 5, however, not considered materially objectionable, nor those relating to the 'scouts.'" Thus you see that the price we have put into this agreement is considered by him to be a liberal one. In his dispatch, after pointing out the modifications which he desired us to make, he says: "The agreement thus modified will, I believe, be a good one for the Indians."

After completing this agreement we submitted it to your missionaries, and I wish now to read to you what they say about it:

Greenwood, S. Dak.,

January 3, 1893

DEAR SIR: I have read the agreement you present the Yankton Indians, by which the Government would pay them \$600,000 for their surplus lands.

I can say to the Indians that I believe the terms of this agreement are the most liberal that could be granted them at this time, and that if this agreement is consummated I have no doubt that the stipulations will all be

faithfully carried out. Also I consider the provisions for the care of the poor, for schools, and for court expenses to be very judicious as begin preparatory to full citizenship. And further there is no cause of apprehension that this agreement will in any way interfere with the treaty of 1858.

John P. Williamson

Col. John J. Cole,
U.S. Commissioner

JANUARY 3, 1893

DEAR SIR: I have heard read by you at different times, and discussed with you and others, the draft of the treaty or agreement prepared by your commission and which you propose to submit to the Yanktons. I here express to you again what I have already said to you, and to others capable of judging, that I am highly pleased with it, and I think it is a most advantageous and liberal offer. I can not but think that it will be so considered by the friends of the tribe who have their best interests at heart.

I think its general provisions are decidedly in the interest of the Indians in their present needy condition; it establishes the condition and protects the rights and interests of the large number of mixed bloods and takes away that "bone of contention," and removes the fear that they may be thrown helpless upon the world. It provides for the settling of the vexation "scout claim," and will procure the settlement of the status of the Red Pipestone Reservation. Again, I think its provisions, as to the poor and helpless, as to schools, and as to securing

recognition and justice in courts of law, are most wise and necessary to conduct the Yanktons through the transition period until they merge into full citizenship and have their share by right in all public benefits.

As to the price offered, \$600,000, for the surplus land of the Yanktons, I am decidedly of the opinion that it is a most liberal price, and that it is all that the Congress of the United States will ever approve. And when the provisions of the treaty are taken into consideration, where Congress is pledged to add an equal or larger amount in several items, it swells the price not only to what is liberal, but generous.

I believe that the benefits which will accrue from a direct sale of the land are far greater in the long run than can be realized from the plan by appraisement.

Sincerely yours,
Joseph W. Cook,
Missionary to the Indians

HON. JOHN J. COLE, *Commissioner*

So you see that this agreement is fully approved by the Secretary of the Interior and by both of your missionaries, and it is, we believe, as good a treaty as was ever offered to a tribe of Indians, and we hope you will see it to be to your interest and sign it.

There has been some question by a few of the Indians in regard to the authority of this commission to negotiate with you in this matter, etc., and on this point I wish to read you the following dispatch sent to your agent by the Secretary of the Interior:

FOSTER, Agent Yankton Agency, Springfield, S. Dak.:

Copies of following telegrams are sent for your information: Greenwood Agency, S. Dak., (via Delmont, S. Dak.) 27th Secretary of the Interior, Washington, D.C.

The undersigned committee at Yankton Agency, duly called as council, are authorized to request the commission sent out by you be recalled. The people, as tribe, do not desire further negotiations can they have no confidence in being commission. When bribery is resorted to influence the Indians, at properly-call council decided by vote in the presence of commissioner to not sell further, the commission allowed the question.

Phelix Brunot
Charles F. Picott
Peter St. Pierre,
Committee.

DEPARTMENT OF THE
INTERIOR
Washington, D.C.,
December 28, 1892

Your telegram received. You submit no proofs. Have had information as to your charges and think same unfounded. Brown has resigned and Mr. Funck, of Nebraska, appointed in his place. The commission will know when to ask to be recalled. The reputation of its members will be protected by the United States and must be treated with respect and courtesy.

John W. Noble, Secretary Interior.

You will notify the Indians that the commission represents the United States and must be treated with all due respect and courtesy. This is important and must be

enforced if there is any necessity. You can write a report direct.

John W. Noble, Secretary Interior.

Mr. Phelix Brunot and others, Committee, Greenwood, via Delmont, S. Dak.:

We come to you with full power to negotiate with you in this matter, according to the best of our judgment, without limit or restriction, but any agreement which we make with you is subject to the approval of Congress and will not be complete until it is ratified by Congress.

From the time we first came to you many of your people have expressed a fear that if you make a treaty with us its provisions may be changed after it is signed, either by this commission before it reaches Washington, or by the officials in Washington. To protect you in this matter we have had this treaty book made for you. Many of your people understand how an instrument of writing can be copied by letter press into a book like this, so as to make an exact duplicate of it, with every line and dot just as it is in the original paper. Now, when this agreement is signed, it will be thus copied into this book, which will be left with you, so that you will have an exact copy of the original treaty, containing every pen stroke that is in that document, so that not one letter can be changed in the original treaty without being detected when compared with this copy. To further protect you, so that you may know that no possible change can be made, we shall, as soon as this treaty has been read, interpreted, and explained to you, put it under seal in the presence of witnesses and then deliver the seal into the hands of one

of the witnesses, who will be present when the seal is broken to see that it is all right, so that no possible change can be made in it after it has been read to you until it is copied into the treaty book.

The various provisions of this treaty have been read, interpreted and explained to your people in small general councils and to many groups of your chiefs and head men, so that we think the provisions of the treaty are already pretty well understood by most of your leaders, and, through them, by a majority of the tribe.

We requested Mr. Battes Lambert to be here as a witness and interpreter this afternoon. As he is not present, I will ask Mr. George Stricker to act in his place. We have now present four interpreters on duty - Mr. William T. Selwyn, Mr. Walter Arconge, Mr. Charles F. Picott, and Mr. George Stricker, and I will ask each one of these interpreters to watch carefully the interpretation of the agreement as it is read to you, and if they discover any error or mistake to call attention to it; that a perfect interpretation of the treaty may go to your people, as we desire that there shall be no mistake or misunderstanding in any of its provisions. Also, there are many members of your tribe now present who understand both the English and Dakota languages, and we will ask them to call attention to any error which they may discover. I will now ask Mr. Charles F. Picott to sit here by my left side and Mr. George Stricker to sit here by my right side, where they can look over and see every word of the treaty as I read it, and see that I read it to the interpreters, every word, just as it is written in the agreement. There is an exact duplicate of this agreement here, and your agent, Mr. Foster, and Col. Adams will also look over that as I

read, and if I make any mistake in reading they, or the two witnesses here, will call attention to it.

Under the above provisions Commissioner Cole then read the agreement verbatim and it was interpreted to the tribe by Walter Arconge and William Selwyn, one or two slight errors in interpretation having been noted and corrected.

At the conclusion of the reading of the treaty Commissioner Cole said: The treaty is now ready for signatures, and we will ask you to come forward and sign.

Many Arrows arose and commenced speaking in favor of the treaty, but Col. Adams called him to order, informing him that no discussion would be indulged in, either for or against the treaty, as we had come there not for discussion but for action. Medicine Cow also arose desiring to speak, as was supposed, but he was informed that the above statement was general and referred to every one present, and as it was nearly night we would have to devote the whole time to taking signatures and could not indulge in any talking.

Col. Adams further said: You have heard the agreement read, and as its various provisions have been read and explained to many of your head men during the past two weeks we think you now understand all its provisions thoroughly, and we now ask you to come forward and affix your names to it. After a few moments delay to give the chiefs an opportunity to come up and sign the treaty, first William T. Selwyn affixed his signature to the agreement and between 50 and 60 other Indians followed him, after which the treaty was put under seal and the council adjourned, to meet again on Monday morning,

January 23, at the police office for the purpose of continuing to take signatures.

Monday, January 23, 1893

Council met at the police office at 10 o'clock a.m., pursuant to adjournment. Commissioners Cole and Adams present. Charles F. Picotte and William T. Selwyn, interpreters, Battise Lambert, witness. The council was called to order by Commissioner Adams. The seal upon the agreement was examined by the witness and found to be all right, and the taking of signatures was resumed and continued through the day. At the close of the day the agreement was put under seal, and the council was adjourned with the announcement that it would convene from day to day for the taking of signatures until the agreement was fully signed.

Saturday, January 28, 1893

Council met at the police office from day to day during the week for taking signatures to the agreement. Commissioners Cole and Adams present, with Charles F. Picott and William T. Selwyn, interpreters; Battise Lambert, witness.

The signing progressed slowly, as the opposition sought by every possible device to keep men from signing, even when they had come from the most remote part of the reservation for that purpose. In this way many who had come for the express purpose of signing the agreement were induced to go away without doing so.

Commissioner Cole said: The Government is giving this tribe as a free gift \$60,000 this year; and you all

participate in this benefit as members of the tribe. The Government also has a large number of these Indians upon the pay rolls as employees. Indians are employed as clerks, as policemen, as mechanics, as laborers, etc., a very large number of them, and these employees get a double benefit from this bounty of the Government for they not only get a benefit as members of the tribe, but the money is paid directly into their hands for their services. Now, why is it that we can not get these employees to sign the agreement? Of all the Indians employed at this agency but two have signed. Louis Claymore and one other mechanic signed, and all the balance are against us, the office is against us, the police office against us, the shops are against us, the whole agency is against us and is a hotbed of opposition, so that men who come here to sign are sent away without doing so. Why is it! We are offering you an agreement which has been approved by Secretary Noble and by both of your missionaries, and so good in all its provisions that not one of the opponents has been able to point out a single defect, and yet the men who should be the very first to favor it are opposing it. There is a cause of this, and I would like to know what it is.

At the close of the day the agreement was sealed up as usual, and the council was adjourned to continue its sessions the coming week.

TUESDAY, January 31, 1893

Council met pursuant to adjournment from yesterday. Commissioners Cole and Adams present, with Charles F. Picotte and William T. Selwyn, interpreters;

Battise Lambert, witness. The taking of signatures proceeded as usual.

COL. ADAMS: We have not been much rushed by signers during the past few days, and we would like to have the clerk keep a little busier. I see a great many men before me who have promised to sign the agreement and who have not yet signed. I would just say to them that this is an excellent time for a little pen practice of that kind, and I would like to have you step up and perform it. Let the young men who can write come up and sign their own names, and the old men who can not write can come up and touch the pen and let the clerk put their names down for them. I know there are a great many men here who want to sign the treaty and I hope they will not be afraid of anybody, but come forward now and do so. If anyone is advising you not to sign the treaty they are advising you against your own interests and against the interests of your tribe, for you all know this is the best treaty that was ever offered to a tribe of Indians.

JOHN J. COLE: In the council on Saturday I asked why none of the Government employees signed the agreement. This question was received in silence, but I have since been told by several persons that the reason is that some of the white employees of the Government are doing all they can to keep Indians from signing and to defeat the treaty. I have said that we can make this treaty in spite of the opposition. When I made that statement I did not expect to find our friends arrayed against us.

This commission has been asked to recommend that when the agency plot is divided up, the employees of the Government shall have a piece of ground taking in their

improvements. This suggestion, I believe, comes from your agent, and has absolutely nothing to do with this treaty; it was definitely so stated in the proposition and I can see no objection to it. But the opposition has seized upon this to cast an aspersion upon the commission for the purpose of defeating the treaty. To remove this weapon out of their hands I will now state that the commission will have nothing at all to do with that matter.

I desire to make one other explanation. Several men have sent other men here to sign the agreement for them. On the day we commenced taking signatures a man from Chouteau Creek sent in his name to be signed to the agreement. I wish to state that we can not take signatures in this way. If men want to sign the agreement they must come here and sign it. If any are sick and unable to come, we will go to their houses and take their signatures.

In conclusion, I will say that we believe a majority of the Yankton Indians want to sell their surplus lands under this agreement, and we will continue these councils and give them a chance to do so.

Several signatures were added to the agreement during the day, among them that of the official interpreter and many of his friends.

At the close, the agreement was sealed up in the usual manner, and the council adjourned to meet again to-morrow morning.

SATURDAY, February 4, 1893

Council met pursuant to adjournment yesterday, having convened continuously during the week for taking

signatures. Commissioner Cole was present, with Charles F. Picotte and William T. Selwyn, interpreters, and Battise Lambert, witness.

Commissioner Adams was absent, having been called away from the reservation by business on the second instant.

The signing of the agreement has progressed with varying success, sometimes with satisfactory rapidity and sometimes coming almost to a standstill.

COMMISSIONER COLE: I desire to say a few words to you at this time. I have always felt confident that I could make this treaty because I knew that your people want to sell their surplus lands and I know I could offer them a liberal price and a favorable treaty, and I still feel entirely confident of success. Indeed, we already have nearly names enough to make the treaty. All elements of the tribe are now represented upon the list of signers, but as we approach nearer to the requisite number to make a treaty the opposition seems more determined to defeat that purpose, and all kinds of false stories have been invented and put into circulation about the Commission, about the agreement, etc., for the purpose of defeating it. If I should undertake to run down all the false statements and answer them it would take all my time, and I shall not do this, for I am much more interested in making this treaty, which I know will be a good thing for the Indians and a good thing for the Government; but I do want to make brief references to some of this uncalled-for opposition.

You object to the commissioners sending out couriers to notify the people of council that have been called to

influence them to come in and sign the treaty, etc., but you, who make this complaint and who are opposing the Government in this matter have sent couriers all over this reservation day and night to work against the treaty and get men to sign a paper pledging themselves not to sign the treaty, etc., to influence men against attending the councils and against the treaty in every way you can. I was told that one of your couriers went to a large party of Indians and, without making any explanation of his proposed action, he went around to each man and got him to touch his pencil. He then signed all their names to a paper pledging them not to sign the treaty, and told them that they could not now sign the treaty, as they had signed a paper pledging themselves not to do so. It is the opposition which has made it necessary for the commissioners to send out couriers.

Without stopping to enumerate the various charges which have been put in circulation I will here state publicly what I have stated many times recently to different persons, that any man on this reservation, white, red, or mixed blood, and whether he is a member of your tribe or not, is at perfect liberty to state publicly anything that I have said at any time, in any place, or under any circumstances, provided the statement shall be full and complete, and not partial so as to convey a meaning different from that intended by me. I mean every word of this statement and if any man knows of one thing that is wrong in the acts of this commission I challenge him to make the statement as I have just indicated.

I do not believe that any treaty with Indians was ever made in a more open and above-board and straightforward manner than this one, nor do I believe that more

pains were ever taken to acquaint every member of the tribe with the exact provisions of the treaty and have the people act intelligently and understandingly in signing it. These councils will continue to give your people an opportunity to sign the agreement. At a later hour than usual the agreement was put under seal and the council adjourned until Monday morning.

TUESDAY, February 7, 1893

Council met pursuant to adjournment, having been in session yesterday. Commissioner Cole was present, with Charles F. Picotte and William T. Selwyn, interpreters, and Battise Lambert, witness; Commissioner Adams still absent.

During the progress of the council Mr. C.H. Bonnin came in with Sam Packard and, addressing the commissioner, said: Mr Packard wanted me to come in with him and request that his name be taken off the treaty. He went on to explain that Mr. Packard was threatened with dismissal, etc., but Commissioner Cole, interrupting, said: You need not make any explanation of this matter, for I know all about it. Mr. Packard signed the treaty of his own free will, and he can not now have his name taken off; and I wish now definitely to state that no man can have his name stricken off after he has signed the treaty, and you might just as well understand this. If we should proceed in this manner we might be here an indefinite time taking signatures and then striking them off because the opposition had got the signer dissatisfied and then taking the signatures a second time. There is no sense in such a procedure and we will not inaugurate it. If a man wants to sign the treaty he is at liberty to do so and there

is no compulsion to make him sign against his will, but when he has signed his name will remain there. I stepped out of the office a moment yesterday to visit Col. Foster's office, and Peter St. Pierre took advantage of my absence and struck his name from the list without letting the witnesses know what he was doing. Peter St. Pierre signed the treaty on Friday, the 3d, and it was all right until yesterday morning and it would still be all right if I had acceded to his unreasonable demands. We are paying Mr. William Selwyn and others who are assisting us in this work \$1.50 per day, and I wanted St. Pierre to assist him in some work for the commission, which he was perfectly willing to do, but demanded \$2.50 per day.

I told him the commission could not pay such a price, but that he could assist Mr. Selwyn better than anyone else I knew of at the particular work I wanted done and, as the work would take but a few days, I would make an exception in that case and would allow them both \$2 per day for that particular work, even if I had to pay the extra out of my own pocket. He made no answer to this, whether he would or would not do the work at that price, but waited around until Mr. Selwyn was ready to commence the work, and when I asked him if St. Pierre was going to help him he said he did not know and I told him to go and find out. He came back and said that St. Pierre would help him, but would not work for less than \$2.50 per day. I told Mr. Selwyn, very well, I do not propose to be bulldogged in a matter of this kind and I will assist you myself, and when Mr. Selwyn and I took up the work and Pete St. Pierre found he had lost his job he was angry and took advantage of my momentary absence to do a wrong and mean thing, and I wish it to be understood

that this will not be accepted as a precedent for such action on the part of signers. Then addressing Sam Packard, he said: Sam, what is the matter with you today? Who has been talking to you to get you dissatisfied over this matter? You came to me last week and said you were dissatisfied over having signed the treaty. I knew then it was because some of the opposition had been talking to you after they found you had signed, but I explained the whole matter to you fully and told you that I knew nothing about what Mr. Picotte might have said to you, but that the commission had never instructed him or anybody else to make the statement that any person would be discharged for not signing the treaty or advanced for doing so; and you came to me at the mess house last Saturday night and shook hands with me and told me that you had seen Charley Picotte and had had a talk with him and that it was all right now and that it was all right between you and Charley, and all right between you and the commission, and that you were now satisfied with having signed the treaty, and I am confident that you would not have raised this matter again if those opposing the treaty had not talked you into it, and I am sorry to see you act so foolish and make such a boy of yourself.

C.H. BONNIN. Then you refuse to let him take his name off the list?

JOHN J. COLE. I do, most emphatically. C.H. Bonnín. We are to understand then, that you will not let any names be taken of the list after they have signed?

JOHN J. COLE. That is exactly what I want you to understand.

C.H. BONNIN. I suppose, then, the commission will do this business their own way, but I think they are exceeding their instructions, and our people are not satisfied with the way this treaty is being made.

JOHN J. COLE. It is unfortunate that the instructions which were sent to us when we were appointed on this commission should have been given out to form a basis of criticism by those who are opposing this work, but we get our instructions from Washington, and not from the enemies of this treaty, and we are responsible to the Department of the Interior for what we do, and not to those who are opposing us on this reservation.

There was some little side talk in a rambling and desultory manner, after which Bonnín and Packard retired, and the business of the council proceeded in taking signatures.

At the usual hour the agreement was put under seal, and the council adjourned to meet again to-morrow morning.

SATURDAY, February 11, 1893

Council met pursuant to adjournment, having been continuously in session, from day to day, since the 7th. Commissioner Cole was present, with Charles F. Picotte and William T. Selwyn, interpreters, and Batties Lambert witness; Commissioner Adams still absent.

But little progress had been made in taking signatures, as the opposition, under the lead of some of the white employes of the Government were straining every nerve to prevent the signing of the agreement.

COMMISSIONER COLE. We have almost enough names to make this treaty and could have had it completed long ago, but this agency has become a perfect hot-bed of opposition and men are influenced against the treaty or intimidated to such an extent that it is almost impossible to take signatures. As soon as a man indicates his intention to sign the treaty, influences are brought to bear upon him to keep him from doing so.

Some men near Cold Spring sent word to us that they wanted to sign the agreement. One was a sick man and one was an old man, nearly blind, and we went there to give them a chance to sign; but when we got there one of the opposition, White Cloud, I believe it was, followed us from house to house to prevent the signing.

There also seems to be a systematic effort to keep the Indians who have not signed out of the way and out of the reach of the commission. Large numbers are off the reservation, and usually the absent ones are those who have not signed the agreement. I have information which satisfies me that many are threatened and intimidated to keep them from signing. The commission have not resorted to any such methods to secure signatures, and I wish to ensure you that we will do all in our power to protect men in the free exercise of their will in the matter of signing this treaty. We shall continue to give the people an opportunity to sign until all have signed who desire to do so. We shall endeavor to give an opportunity for signing the treaty at the agency when desired, but we shall also hold councils and take signatures at other places on the reservation.

The opposition are industriously circulating the report that Indians who are in the employ of the Government are threatened with dismissal if they do not sign the treaty. I again state that this is absolutely false. The commission have never sought to influence men to sign the treaty or to favor it by promises of a reward or threats of any kind, and we have used no influence either at Washington or on the reservation to have men promoted or favored for signing the treaty nor to have them dismissed or discriminated against for refusing to sign or opposing the treaty. To secure the dismissal of one of the Indian employes we would have to apply to your agent, Col. Foster, and he will tell you that the commissioners have never made any effort to have a man favored for signing the treaty or discriminated against for not signing it.

Every prominent man of your tribe who signs the treaty is immediately charged with being bribed. Mr. Homer Johnson came down here on the 4th instant, and it was charged that he was in a dark room with Mr. William T. Selwyn, and his men all the evening paying them off. I was with Mr. Johnson during the whole of the fore part of the evening. I went directly from Mr. Johnson's company to meet Mr. Selwyn and his friends in the dark room spoken of. We were in Col. Foster's office in the rear of the police office and had only the light of the stove for the reason that there is no lamp in that room. We were in there counseling about the treaty but no money was paid. I was with Mr. Selwyn and his friends until they dispersed at bed time, and I know of my own personal knowledge that Mr. Johnson did not meet Mr. Selwyn or any of his men that night. Now this is in keeping with all

the ingenious stories circulated by the opposition and I tell it to show you how the opposition manufactures reports against the work of this commission. In this connection, I want to state that there is not upon this reservation a corruption fund to the amount of one dollar, more or less, nor has there been during the progress of this work, and to the best of my knowledge and belief not one cent has ever been used to bribe men to sign the treaty or to favor it.

MONDAY, February 13, 1893

A feast was issued and a council called at Red Bird's house near Cold Spring. Commissioner Cole was present, with Charles F. Picotte and William T. Selwyn, interpreters. Commissioner Adams still absent from the reservation.

Though the day was very stormy, about 50 Indians were present, the majority of them being those who had signed the treaty. A large number of nonsigners who were expected to be present at the council had been taken away from the reservation to Nebraska for the day. The agreement was read and interpreted and explained, and several of those who were present promised to sign the treaty at another time, but none signed at this council. The feast was then served, all partaking, and the balance of the time was put in social entertainment, with occasional allusions to the work of the Commission, after which the agreement was put under seal and the council adjourned.

SATURDAY, February 18, 1893

A general council of the tribe was called at the agency, in the presbyterian church, Commissioners Cole and Adams and Special Agent Col. James A. Cooper were present, also chiefs, headmen, and other Indians to the number of about 200, Commissioner Adams having returned to the reservation on the 16th instant, William T. Selwyn, interpreter; Henry Bonnin, interpreter, for the opposition. The council was called in order at 2 o'clock p.m. by Commissioner Adams.

COL. ADAMS. This council has been called to discuss the treaty and to hear from those who claim to have complaints to make against the commission, and as there are probably a large number of speakers here there may not be time for all to speak at as great length as they may desire, and to make the matter fair of both sides I will give one half of the time to the opposition and one-half of the time to those favoring the treaty, and the opposition can have the first part of the time. This was agreeable to the opposition and he asked them to proceed. They answered that they could not do so, as Henry Bonnin, their interpreter, was not yet present. Col. Adams suggested that as William T. Selwyn and several other interpreters were present that they might proceed with another interpreter and asked them if they would not proceed. This they declined to do, saying that they wanted Henry Bonnin, and after further delay Henry Bonnin was sent for.

JOHN J. COLE. While the opposition are waiting for their interpreter I desire to make a few remarks, and will say that this time will not be taken out of the time of the

opposition, but the time for debate can commence when they are ready to talk.

We are offering the Yankton Indians so liberal a price for their lands and have drawn for them so good a treaty that the opposition find it difficult to keep the Indians from signing, and all kinds of stories and false reports derogatory to the commission and their work have been put into circulation to influence the Indians against this treaty. The commissioners have had but one purpose before them in this work, and that was to deal fairly with the Government, and fairly and liberally with the Indians, and to make just as good a treaty for your people as we could draw up. Col. James A Cooper, who is present with us this afternoon, was sent here by the Government to disburse for this commission, and after he came here I asked the department to instruct him to investigate the methods of making this treaty, and he has been so instructed, and if this commission has done anything wrong, I want you to show it up; and that no one may be restrained from the freest expression by any feeling that it would be a violation of confidence, I will here repeat, what I have before stated, that any man on the reservation, white, red, or mixed-blood, and whether he is a member of the tribe or not, is at perfect liberty to state publicly anything that I have said at any time, in any place, or under any circumstances, provided that the statement be made full and complete, and not partial so as to convey a meaning different from that intended. No man need consider anything I have said to him, or which he has heard me say to others, to be a matter of confidence, but he is at perfect liberty to state it all.

Henry Bonnin having arrived, the opposition took the floor. Several speeches were made, objecting to the agreement in a general and rambling manner on account of the price and against the commission, claiming that men had been influenced to sign the agreement who did not understand it, and do not know, what they have signed for, etc. They said the provisions of the treaty were all very good, but they wanted a larger price for their land, and they thought the commissioners were not doing the business as the Government had instructed them to do. They did not think it was right to go about over the reservation to take the signatures of sick men and old blind men, etc. They did not think it was right to send couriers over the reservation to notify men to come in and sign the treaty.

WILLIAM IRONSOLDIER. I want to express my opinion in regard to the way the Commissioners are trying to make this treaty. I object to them sending men around over the reservation to get men to sign the treaty. I object to them going to people's houses to get them to sign the treaty. I do not think that they are doing right at all. I do not think they are doing as they have been instructed to do by the authorities at Washington. Pointing to Running Bull, one of the Sully Scouts, he said: There is an old chief. He signed the treaty for the scout money. He did not know anything about the treaty. A sick man signed it. He did not know anything about the treaty. (The sick man referred to, and the only sick man who had signed the treaty up to that time, was Walter Arronge, who interpreted the treaty when it was read at the council for signing, and who had interpreted the treaty day after day for nearly a month, and knew more about it than any

other man on the reservation excepting the commissioners.) Soldier continued thus: I do not believe it is right to get sick men and old men who know nothing to sign. In this way he alluded to all the persons he could think of who had signed the treaty, in each case charging that they had signed it for some selfish motive or without knowing anything about the agreement.

JOHN GRAYFACE. Here are our old chiefs. They have not been consulted in this matter. We have great respect for our chiefs and think they should lead in the matter of this kind. We do not think the commission did right in not consulting them. We do not object to the provisions of the treaty, but we do not want to make a treaty at this time. Grayface continued to discuss the matter in about this manner for some time; also many other speakers who talked before Ironsoldier discussed the treaty and objected to it on almost the same general basis as that set forth in Ironsoldier's speech.

At the conclusion of Grayface's remarks, Judge Ray arose and said: It looks well for my friend Grayface to talk about consulting the chiefs and respecting them. He has always opposed the chiefs and has been against them in every way. He signed a petition and makes the others sign it to do away with the chiefs altogether. Then he did not think it right to follow the chiefs or consult them. It looks very suspicious to see him manifest so much anxiety about the chiefs at the present time. Others spoke in opposition to the treaty until the time allotted them was consumed.

COL. ADAMS. The opposition have now occupied all their time and I have allowed them some additional time

to make up for interruptions. We will now hear from those favoring the treaty.

At this announcement nearly the whole of the opposition arose in a body and started to leave the building, and most of them departed. The commissioners however called for order and informed them that there was other business to be transferred and requested them to remain. The friends of the agreement had remained and a few of the opposition resumed their seats.

JOHN J. COLE. The friends of the agreement have listened attentively to the opposition, but it seems the opponents of the treaty have tired, and ran and the friends of the treaty decline to talk, as those whom they desired to answer and to whom they desired to talk have left the council. I therefore suggest that we now proceed with the other business of the council, and as the opposition claim to have charges against the commission it is a part of the business of this council to hear those charges. Col. Cooper, as I have told you, is instructed to investigate the methods of making this treaty, and I hope you will now lay before him the charges which you want to have investigated.

There are also complaints against the white employes of the Government charging them with interfering with the work of the commission and trying to defeat the consummation of this treaty.

The opposition answered that they were not ready, that they wanted a week to get ready.

COL. COOPER. If these men have done anything wrong you certainly know it now, and I would like to have you state your charges.

SPOKESMAN FOR THE OPPOSITION. We can not make the charges now; we want till next Friday to get ready.

COL. COOPER. That is too long; you can get ready by Tuesday just as well as to put it off till Friday.

White Swan arose, and pointing to Special Agent Cooper, said: you are an agent of the Government and I want you to investigate the charges against this commission. I want you to meet me next Friday in council for that purpose.

COL. COOPER. Yes, I will give you a hearing but do not think you ought to wait till next Friday; it would be better next Tuesday.

WHITE SWAN: Tuesday is too short a time, and I want you to wait till Friday.

COL. COOPER: If you have anything to present I think you can be ready by Tuesday. I want you to present your charges in writing and you shall have a fair and impartial hearing and I won't limit you in the time you occupy. I shall appoint Tuesday, and shall expect you to get your matters here in shape by that time.

COL. ADAMS. Bear in mind that Col. Cooper has appointed a council for next Tuesday, and I hope you will all tell you friends about it and make it a point to be here.

JOHN J. COLE. I have alluded to complaints by the Indians against the white employes of the Government for interfering with the work of the commission. If the

Indians want to lay these charges before Col. Cooper, I hope in presenting them to him you will not tell him what you have heard or what somebody else said, but tell him what you yourselves know, and do not be afraid to express yourselves freely and fully.

The council then adjourned.

CAMP OF YANKTON SOLDIERS,
Sidney, Nebr.,

Saturday, February 25, 1893

WASHINGTON, D.C., January 17, 1893

. . . Commission should go, if necessary, to camp of enlisted Yankton Indians to procure their signatures.
* * *

JOHN W. NOBEL;
Secretary

JOHN J. COLE,
Yankton Commissioner.

(To be delivered by special messenger, etc.)

Under these instructions Commissioner Cole left the reservation on Thursday, 23d instant, with Felix Brunot, as interpreter and witness, to give the Yankton soldiers an opportunity to sign the agreement. A council of Yankton Indian soldiers was called in their quarters, in the presence of Lieut. Samuel Seay, their commander, with Felix Brunot and Julia Dezera, interpreters, awaited by Charles Martin and others.

The seal of the treaty was examined by Felix Brunot, who found it to be all right and the seal under which the

treaty had left the reservation. The treaty was then opened, preserving the seal that it might be returned to the official interpreter at the agency. The treaty was read and carefully interpreted to them, article by article, great care being taken to see that they all understood every provision of the agreement. After the article had been read, interpreted, and explained Lieut. Seay would ask the men if they fully understood what it meant, and, if the article was not perfectly understood by all the Indians, it was reread, interpreted and explained until thoroughly understood. At the conclusion of the reading of the agreement, Commissioner Cole exhibited the treaty book which he had prepared for the Yankton Indians and explained how an exact duplicate of the agreement, as signed by the Yankton Indians, would be copied into it by letterpress, and that this book would be left with the Indians so that they would have an exact copy of the treaty containing every line, word, and mark just as it is in the original.

LIEUT. SEAY. You have heard this treaty read and explained and you all say you understand its various provisions and know what it means. You are all men and you know your own business and you must act like men and exercise your own judgment in this matter. If you want to sign this treaty, go ahead and sign it, but understand that you do not have to sign it unless you want to. If you think the treaty is a good one and will benefit you and your people it is right for you to sign it, but if it is not then you should not sign it, and you should not sign it unless you know this to be the case and sign it because you yourselves desire to do so and not because anyone else wants you to sign it. Now, I want you to understand

that you must exercise your own judgment in this matter, and if you want to sign go ahead and do so; if not let it alone.

Several of the soldiers signified their desire to sign, and Louis Shunk being nearest to the table commissioner Cole offered him the pen to sign his name. Lieut. Seay called out: "Hold on there; if you want to, sign in the order of your rank. If Charles Martin wants to sign let him sign first." Charles Martin signed, and Lieut. Seay said, "Now go ahead and sign in the order of your rank, as many of you as want to sign." The signing then proceeded until the 19 Yankton soldiers who were present had affixed their names to the agreement. Commissioner Cole then proceeded to the hospital with Lieut. Seay and Felix Brunot and took the signature of the one remaining Yankton soldier, who was sick and unable to attend the council, after having explained to him the provisions of the agreement.

COMMISSIONER COLE. I want to congratulate these Yankton soldiers upon having unanimously signed this agreement. I think it shows your good judgment, for I believe it is an agreement which will be very beneficial to your tribe. It has been very gratifying to me to see that as many as four-fifths of you soldiers have come up here and signed your own names. This is evidence that your friend and commander Lieu. Seay is much interested in your welfare and has taken pains to give you an opportunity to learn to write, and I understand that he is instructing you in other ways. This evidence of advancement is certainly very commendable to him and to you.

The signing of the agreement by the Yankton soldiers was then certified to by Lieut. Seay and Charles Martin, and the agreement was closed up and sealed with the company's seal, a duplicate of which seal Lieut. Seay was instructed by Commissioner Cole to mail to the official interpreter of the Yankton Agency, with the seal taken from the treaty when it was opened in the council, for the benefit of the Yankton official interpreter.

The council was then adjourned and Commissioner Cole and Felix Brunot, after taking leave of the officers and Yankton soldiers, proceeded to return to the reservation.

THURSDAY, March 2, 1893

A tribal feast was issued and a general council of the tribe was called to announce the completion of the treaty. Present, Commissioners Cole and Adams, and between 200 and 300 Indians, the signers of the agreement generally being present, though but few of the opposition attended. William T. Selwyn, interpreter. Council was called to order at 2 o'clock p.m.

COL. ADAMS. My friends, the work of this commission with you is finished, and before retiring I desire to say a few words to you, though I will not detain you long this afternoon. We have been a long time with you and tried to do you good. We have made a good treaty and a majority of your tribe have now signed it, and if Congress ratifies this work it will be a great benefit to your people. I think you have acted wisely in consummation this agreement with the Government, and as commissioners we will do all we can to secure its ratification by Congress.

Every man who has spoken of this agreement has pronounced it a good one. Even the opposition acknowledge this. Not one of them has pointed out a single provision of the agreement which is not in the interest of the Indians, but they have all been forced to say that the treaty itself is a good one, and in order to have any basis of opposition it was necessary to trump up or manufacture charges against the commission, against the friends of the treaty; and the enemies of the treaty have shown great fertility of imagination and vigor of intellect in misrepresentation and in circulating false charges over the reservation. The most ridiculous and incredulous stories were invented. Every prominent man of the tribe who signed the treaty was charged with having been bribed. Often the amount of the bribe was fixed at some fabulous sum. During my absence, Col. Cole requested Secretary Noble to instruct Special Agent Cooper to investigate the methods of making this treaty, which request the Secretary complied with. I am very glad that Col. Cole took this step, for we want to know that no improper methods have been resorted to in making this treaty. The friends of the treaty, those who have worked with us and not against us, know that more pains were never taken to have everything exactly right and perfectly understood; and if the opposition do not know this we are glad to have them find it out. Col. Cooper has held three councils to investigate this matter and has told you that there is absolutely no basis for any of these charges; that more correct methods were never pursued in making a treaty. I have finished.

JOHN J. COLE. My friends, it affords me great pleasure to inform you that, so far as the Yankton Indian are

concerned, their treaty with the Government of the United States is now complete. More than a majority of the adult male members of the tribe have signed the treaty, and it now only remains for the Congress of the United States to ratify our work.

I desire to congratulate you upon consummating with the commissioners the best treaty which any tribe of Indians has ever made - a treaty, which if ratified by Congress and successfully carried out, will benefit your people for all time. We counseled with your chiefs and headmen. We listened to the demands of these men who have worked with us to secure this treaty. We studied the conditions and wants and necessities of your people, and then tried to draw a treaty which would best meet these conditions and answer those demands and all who have examined this agreement tell us that we have been very successful in this effort, and that we have a treaty which is good for the Indians and good for the Government. I congratulate you upon having secured such a treaty and thank the friends of the treaty, who have assisted us in this matter, for their earnest cooperation and untiring efforts to secure this result.

I have said that we could make this treaty if the opposition were twice as strong, and I think I was correct in that statement, for paying the Yankton Indians as we do so liberal a price for their lands and offering them an agreement, which even the enemies of the treaty, without a single exception, say is all right in all its provisions. I knew we could overcome all such personal and factual opposition as was brought against us. But when those who should have been on the side of the Government joined the opposition and with all the means at their

command interfered with the work of the commission, I must confess that we did not desire that the opposition should be doubled; still we have met it and have made a treaty, as I have steadily promised the friends of this work we would do. As a commissioner I am gratified at the successful termination of this business, every friend of the treaty has a right to feel proud of the part he has borne in it.

I want you to know who is entitled to the credit for making this treaty. It is not the opposition, but the friends of the treaty, who have secured for you these great benefits. The leaders of the opposition, with their white allies, and those who have trained with them in opposing the work of this commission, have done nothing to benefit your tribe. They have not secured for the tribe a single one of the favorable provisions of the agreement. They did not secure for the tribe one cent per acre on the price of your lands. They are not entitled to one iota of the credit for what has been done for the benefit of your people. They have not labored with the commissioners to secure a better price, better terms, or better provisions. They have simply waged a blind, unreasoning warfare against the commission, against the friends of the treaty, and against the treaty itself, for the sole purpose of defeating it upon general principles and personal grounds and not because of any objection they had to the treaty itself. In this matter the friends of the treaty have been the real friends of the tribe, and every man to whom you are indebted in the least degree for the benefits of this agreement has put his name to it.

William T. Selwyn, Charles F. Picotte, Felix Brunot, Rev. Isaac Tuttle, Robert Clarkson, Judge Ray, Battise

Lambert, and those who have cooperated with them, are the men who have made this treaty and who have secured for the Yankton Indians all the benefits contained in the agreement. They secured for you the liberal price paid for your lands. They secured every desirable and favorable provision of the agreement. They have all signed the treaty, but their signing was conditional upon such price and such favorable provisions as were satisfactory to them, and not one of them signed until these conditions had been met. Mr. Selwyn has worked with us from the very first in trying to forward the work of this commission, but he was one of the most critical Indians upon the reservation and hardest to please in the matter of price and provisions of the agreement and he would never promise the commission that he himself would sign the treaty until he was satisfied that we were offering as large a price as the Yanktons could secure for their lands and every provision in the treaty which he thought the interests of his tribe demanded. Mr. Picotte, Mr. Brunot, and some others opposed us for a while when some things were not satisfactory to them, but after we had satisfied them upon these points they came in and have since worked faithfully with us. In this connection I can not omit your agent and your missionaries, for these men have all been your real friends in this work. The commissioners know every element which has contributed in the making of this treaty and we want the Yankton Indians to know who have been their real friends in the management of this important affair.

To disarm the false statements which were put in circulation by the opposition, and to show that their charges against the commission and against the friends of

the treaty were false and groundless, I asked the Department to instruct Special Agent Cooper to investigate the method of making this treaty. He was so instructed, and he has made the investigation, giving you the benefit of three councils for this purpose, and he has told you that the opposition have utterly failed to make a case against the commission or any of the leaders who have favored the treaty, and that not only were the current charges unsupported by evidence, but when it came to the matter of charges no one was found who, of their own knowledge, could make a charge that reflected discredit upon anyone, except those who have been circulating these false charges. Owing to the utter failure of the opposition in this matter, the friends of the treaty have determined not to present to Mr. Cooper, any charges against the white employes of the Government for interfering with the work of the commission; and I am glad of this, for all we sought was the successful termination of this work and the vindication of our methods in performing it; and now that the treaty is made, and as it has been shown that it was made by perfectly correct methods, we do not care anything about the white opposition.

I have no desire to review the criticisms of the opposition or make any attempt to answer them, as Col. Cooper has done this well and sufficiently. We have not objected to letting the opposition worry over what they considered to be great sins on the part of the commission; but we desire to let the friends of the treaty know that all the way through we have acted in perfect harmony with our instructions from the Government. The following dispatch and Secretary Noble's answer will explain our authority for holding councils at different places on the

reservation and for taking signatures at the homes of sick men, etc., and for taking the signatures of squaw men to a paper of approval.

ARMOUR, S. DAK, *January 23, 1893*

Agreement is dated at Yankton Agency. Fifty signatures in first council. Can we hold councils for signing at other places on reservation? Must all signing be done in open council? Some sick at home. Must squaw men be prevented from signing? Messenger will wait at Armour for answer.

JOHN J. COLE.
MR. SECRETARY OF THE INTERIOR.
WASHINGTON, D.C., *January 23, 1893*

You can hold separate councils for signing and can take signatures of individuals anywhere, having witnesses and explaining agreement carefully. Squaw men better sign separate paper expressing consent, but enough without them. It is good contract for Indians.

JOHN J. COLE
JOHN W. NOBLE, *Secretary.*
Yankton Indian Agency (via Armour)

It is unfortunate that much strife and contention should have arisen over this business, and now that the agreement has been signed by more than a majority of the tribe, all animosity and personal feeling should cease and the tribe should be united in securing the ratification and judicious and faithful carrying out of so favorable an agreement, and I truly hope that this will be the case. Should I come back here at some future time, as I trust I may do, I shall hope to see you united, prosperous, and happy. You have the conditions, the opportunity, and the

ability to become the richest community in South Dakota if you rightly use your advantages.

We promised you a feast upon the conclusion of the treaty and a feast has been provided for you, and as I cast my eye through the window upon the common I see the tongue of flame licking the bottom and sides of the camp kettles and then condensing into smoke which rises above the savory feast which your women are preparing for you. I will therefore not detain you any longer, but say farewell.

COL. ADAMS. Is there any more business before the council? If not, we will adjourn.

JOHN J. COLE. I would like to give some of our friends here an opportunity to say a word at the conclusion of this work, and to save time I suggest that these gentlemen address the Indians in their own tongue without interpretation.

Rev. Isaac Tuttle, Judge Henry Sticker, Peter Le Grand, William T. Selwyn, and others, all signers of the agreement, then made speeches in the Dakota language. During the speaking Mr. Shunk sat between the commissioners and interpreted such outlines of the various addresses as would give a good understanding of what was said. All these speeches were forcible arguments in favor of the treaty and setting forth the very correct methods pursued by the commissioners in making it. They pointed out the favorable features of the agreement and called attention to the advantages which would result to the tribe from carrying it out.

They alluded to the unfair and illegitimate methods employed by the opposition in trying to defeat the treaty, and particularly of the very improper methods resorted to to prevent the signing of the agreement, and they emphasized the utter failure of the opposition in trumping up charges against the commissioners and friends of the treaty, which had no foundation in fact, and trying to defeat the treaty on personal grounds and not because of any objections to the treaty itself. They spoke with emphasis concerning the painstaking efforts of the commissioners in their dealings with the Indians. They pointed out the desirability of dropping the feud and contention over the treaty, and all uniting in carrying it out for the greatest benefit of the tribe. Among other things Mr. Selwyn said, "The young men wanted the chiefs to lead off in this business, but they were very slow. They would not go ahead in the business and we had to take it up. They now complain that they want changes made in the agreement. If they want changes in the agreement they should have investigated it and changed it before it was sent to the Secretary for his approval. It is too late now, but I think this claim, that they want changes in the agreement, is only an excuse for not signing it. It is a good treaty; all the bad feelings had been manifested by the opposition. The friends of the treaty were always ready to welcome any and all to cooperation with them and never indulged in threats, innuendoes, or any other improper methods to secure their cooperation, and that they now have no feeling of animosity toward the opposition and trust that so much feeling as may exist on the part of the opposition may be dropped in the interest of the tribe.

The commissioners then affixed their names to the agreement, which was afterwards put under seal, and the council adjourned.

MEMORANDA.

(1) Councils were held by Special Agent Cooper on February 18, February 21, and February 24, for the purpose of investigating the methods of making the treaty, and the proceedings of those councils were forwarded to the Department with his report. We do not deem the councils of February 21 and February 24 as properly belonging to the work of this commission, and do not record the proceedings.

(2) A feast was issued to the Indians at White Swan about February 6, and the friends of the agreement held a council in the interest of the treaty; and arrangements were made to hold a council there later for signatures, but at the time set for that council a large party of Indians, some 20 or 30 in number, was gotten up by the opposition to leave the reservation and visit Swift Bear camp. Most of the Indians in the party were those who had not signed the agreement, many of whom had expressed a desire to do so, and the object of the visit was to get them away from the reservation to keep them from signing. The commission informed the agent of this fact and requested that the Indians be brought back. An Indian policeman was sent after them, and upon their return Commissioner Adams went there with interpreter and witness and took the signatures of several of them.

SATURDAY, March 4, 1893

Council for consultation and to examine the signatures to the agreement. Present, Commissioner Cole, the interpreters, witnesses, and a few of the head men.

WILLIAM T. SELWYN. The signers of the agreement have appointed 6 of these gentlemen as a committee to examine the signatures to the agreement and see if everything is right, and I will ask Commissioner Cole to show them the treaty and the sheets containing the signatures, that they may examine them.

JOHN J. COLE. I am very glad indeed that your people have taken this action. You men who have worked with us know that everything pertaining to this treaty is right and all that has been done by the commissioners and friends of the treaty is correct, and I am glad this committee has been appointed to investigate the signatures and report upon them.

The agreement was then shown and the sheets of signatures were passed from hand to hand, each member of the committee and the other persons present examining each name to see that the signing was all correct and to count the signatures to ascertain if a majority of the tribe had signed. This committee made its report in writing, stating that the signing was all correct and that a majority of all the adult members of the tribe had signed the agreement, and that report was attached to the treaty; the committee having been increased to 8 at the suggestion of Commissioner Cole.

After a general consultation in regard to the interests of the treaty, the council adjourned.

WEDNESDAY, March 8, 1893

Council for consultation and for certifying to the agreement by the interpreters and witnesses. Present, Commissioner Cole, the interpreters, witnesses, and a few of the headmen of the tribe. Commissioner Adams absent, having left the reservation on the 5th Instant.

JOHN J. COLE. I have now completed the work of the commission and have drawn certificates for the interpreters and witnesses to sign. Please examine the agreement and other papers and the certificates, and if you find everything right sign them.

This was done and the certificates were signed.

WILLIAM T. SELWYN. We have thought that it would be best for you to turn the treaty book over to the Rev. John P. Williamson, to be delivered upon demand of the tribe when they shall have appointed a custodian and committee for that purpose.

COLE. I think this is the best disposition to make of the treaty book for the present, and will comply with your request. The seal upon the treaty was broken in the presence of witnesses and the agreement with signatures and all accompanying papers was copied into the treaty book, so that your people will have an exact copy of this treaty. As the agreement is now copied in the treaty book there is no longer necessary for putting it under seal. I will copy the certificates and then deliver the book to Rev. John P. Williamson, as you request, and I think he had better hold it until the treaty is acted on by Congress, or at least until the original is deposited in the Interior Department with our report.

There was then a general consultation in regard to the interests of the treaty, Commissioner Cole urging the friends of the treaty to stand together and protect the good work which they have done.

The council adjourned *sine die*.

WASHINGTON, D.C.,

March 31, 1893

The foregoing council proceedings, from Saturday, October 8, 1892, to Wednesday, March 8, 1893, were kept without the aid of a stenographer, except for two or three councils, and are not intended to be a verbatim report, but they are correct in all substantial particulars and are as nearly verbatim as possible under the circumstances, and they correctly represent the council proceedings between the commissioners and the Yankton Indians.

J.C. ADAMS

JOHN J. COLE

Yankton Indian Commissioners

LIST OF ADULT MALES OF THE
YANKTON TRIBE OF SIOUX INDIANS.
BASIS FOR AGREEMENT OF DECEMBER 31, 1893.

*List of adult males of Yankton tribe of Sioux Indians
used by Yankton Indian commissioners is
taking signatures to treaty of December 31, 1893.*

(Omitted chart of Indian signers and corresponding English names, the summary of the total number of Indians, and the number of full-blood and mixed-blood Indians and their distribution on or off the reservation).

53d Congress
2d Session
United States Senate

EXH 606

Doc. No. 134

YANKTON AGENCY
GREENWOOD, S. DAK., March 2, 1894

Hon. J.K. Jones, U.S.S.,
Chairman Committee Indian Affairs:

DEAR SIR: We the undersigned chiefs, headmen, and members of the Yankton tribe of Sioux Indians do hereby petition and request you to take views in our needs, necessities, and points in connection with the treaty of 1892 now pending for its ratification in the present session of Congress.

When we signed the treaty we knew what we were doing for ourselves and for the Yankton tribe in general. We did sign it because we love and respect our families, for whom we expect a support could be made out of the sale of our surplus lands. We signed it because our old and infirm people and orphans are in the need of help and are just at the present time badly off in various ways. And also we signed it for the following reasons: We think it is a good treaty. We have had a good understanding of its provisions and the compensation. We know that we are gaining every day by signing this treaty, that is by getting interest on the money. We have had no inspiration given us to make this treaty by any white man, either outside or inside of the Yankton Reservation, like the opposition who were continually butting their heads against the doings of the Great Father with the Yankton tribe at the advice of some soreheads. (See Yankton Sioux Commissioners' Report, pp. 22, 23, 24, etc.). The opposition shows itself by the element of their ceaseless attacks.

By means of the treaty we want to encourage our churches and schools and have the people progress in enlightenment and civilization. We want the nation to take on new life by becoming good farmers and mechanics and professional men, and that they should all be good citizens of the United States. We do not want to become loafers and beggars like the majority of the opposition. We want the laws of the United States and the State that we live in to be recognized and observed. We do not think it is a proper thing to keep up the tribal relation – like the tribal relation and its existence now on this reservation – as the tribal relation on this reservation is an obstacle and hindrance to the advancement of civilization. For instance, the matter of the tribal relation is a bondage to a tribe of Indians where the tyrannical chiefs are principally looked upon for advice, but of course there are some exceptions. We know that the Yankton tribe is decreasing very fast, and the reason is that we live in miserable huts with dirt roofs, and can not raise crops enough to support our families, especially for the last three or four years, and our rations for that length of time could not support us, hence the sickly ones, in need of special help and suitable food perished. At the same time we are dying fast with consumption and scrofula on account of the poor modes of living both as to dwellings and food. We are therefore anxious that this treaty should go through at once, so as to enable us to receive a sufficient sum of money as cash payment to improve us mentally and physically. Without this treaty we have no hope of prosperity, and no desire for civilization. We think it will benefit our children by associating them with white people, especially in the schools and in farming.

We do not wish to see people other than Indians get this treaty mixed up and into confusion on account of personal prejudice against each other (*See Yankton Sioux commission's report, pp. 22, 23, 24, etc.*) for it is a detriment to the Government and also to us. This demoralizing influence on the part of the opposition reminds us that of the Minnesota massacre of 1862 and the Canadian war, under Louis Riel, and also the new Messiah craze, which resulted in war at Pine Ridge by the inspiration of white people on account of political and personal revenge and prejudice.

We have the honor to request you to use your influence in the passage of the bill effecting our treaty with the U.S. Government for the relinquishment of our surplus land.

We hereby certify to and corroborate the correctness of the report of the commission to treat with the Yankton tribe in 1892, and that we as a nation wish to adopt the white man's way and request you to see that justice may be done to us by ratifying the treaty of 1892 aside from the opposition.

(signers omitted in printing)

CONGRESSIONAL RECORD

1894

(53 Cong. Rec. —)

* * * *

H.R. 6913 —

Making appropriations for current and contingent expense of the Indian Department and fulfilling treaty stipulation with various Indian tribes for the fiscal year ending Jun 30, 1895, and for other purposes.

* * * *

(53 Cong. Rec. 6372)

Mr. HOLMAN said: Mr. Chairman, the Clerk has now read down to page 77. I wish to ask unanimous consent that the names of the Indians who subscribed to this agreement, all from line 11, page 77, to line 23, page 92, be omitted. These pages embrace the names of the Indians who subscribed to this agreement and the various certificates of authentication. I suggest that those pages be omitted.

Mr. MARSH. Mr. Chairman, I object.

Mr. BOWERS of California. I object. We can not change the order of the House.

Mr. OUTHWAITE. One minute, Mr. Chairman —

Mr. MARSH. Regular order.

The CHAIRMAN. The Clerk will read.

The Clerk proceeded with the reading of the bill. Having proceeded for some time,

(53 Cong. Rec. 6373)

Mr. MAHON said: I ask unanimous consent that all those names be omitted.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. MAHON] renews the request that the names of the Indians signing this petition be omitted by the Clerk. Is there objection?

Mr. WILSON of Washington. What is that?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. MAHON] asks unanimous consent to dispense with the reading of these Indian names in the treaty. Is there objection? [After a pause.] The Chair hears none.

Mr. WILSON of Washington. The Chair will recollect that I called his attention to that matter in the early part of the reading of this bill. There is not a human being on earth who could read them so that anybody could understand, and I will not object.

The Clerk, omitting the reading of the signatures, proceeded with the reading of the bill. Having read the first paragraph on page 94,

Mr. McRAE said: A parliamentary inquiry. Should a point of order be made before a paragraph is read, or after?

The CHAIRMAN. At the conclusion of the reading of the paragraph.

Mr. McRAE. I desire to make a point of order to the second paragraph on page 94.

The CHAIRMAN. The Clerk will read the paragraph. The Clerk read as follows:

Second. That the lands by said agreement ceded to the United States shall, upon proclamation by the President, be opened to settlement, and shall be subject to disposal only under the homestead and town-site laws of the United States (except section 2301 of the Revised Statutes, which shall not apply), excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of the State of South Dakota: *Provided*, That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States, for the land so taken by him, in addition to the fees provided by law, the sum of \$3.75 per acre, one-half of which shall be paid within three years from the date of his original entry: but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections 2304 and 2305 of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid: *Provided, however*, That each settler shall be limited to 80 acres in amount, but after the expiration of six months from the opening of said land to settlement, may take an additional 80 acres from any of the lands of said tract then subject to entry: *And provided further*, That after three years' actual and continuous residence upon said land from date of settlement, the settler shall, upon full payment of \$3.75 per acre, receive patent for the tract entered: *Provided*, That settlement shall

be made under this act within thirty days from date of filing on land.

Mr. McRAE. Mr. Chairman, that paragraph changes the public land laws of the United States, is new legislation, and contradicts the very treaty that it confirms. Article 8 of the treaty provides that surplus lands shall be disposed of under the existing land laws of the United States. This paragraph of the bill which has just been read involves new land legislation, and I have always contended and now insist that while all the treaties that can possibly be should be ratified, yet I do not want a separate land system for every reservation that is opened. It is vicious and makes a great deal of trouble and allows fraud in many cases.

The CHAIRMAN. Does the gentleman from South Dakota or any member of the committee care to be heard on the point of order?

Mr. HOLMAN. Mr. Chairman, I suppose as a matter of fact that the provisions which have already been read are subject to the same objection as this particular section. The legislation is founded on a treaty or an agreement with an Indian tribe. I suppose that at the present time these are regarded as agreements or as contracts between an Indian tribe and the United States. They were formerly treated as a treaty, and stood on the same footing as a treaty with a foreign nation, until about fifteen years ago.

Since that time they have been considered as contracts, requiring the action of both Houses of Congress. Prior to that time they were ratified in the Senate, after they had been negotiated by the President, just the same as a treaty which had been negotiated with a foreign

nation. This is the ratification of an agreement between an Indian tribe and the United States, and it involves a modification of the treaty or the provisions of the agreement; as, for instance, the agreement provides that the money is to be placed to the credit of this Yankton band, bearing interest at the rate of 5 per cent. That is above the rate we have been paying of late years; and therefore it is proposed to modify this agreement so as to reduce the amount of interest to 4 per cent, as of late years we have never paid more than 4 per cent.

There are all through this ratification changes in the terms of the agreement: and I admit that in the particular section referred to, there is a provision that modifies the land law. The present law, the act of March, 1891, provides for a residence of fourteen months to the extent of a quarter section of land.

This provision contemplates a homestead of 80 acres, instead of 160 acres, except that after a period of six months after the land has been opened, if the land is not taken up, a settler may enter an additional 80 acres, making 160. In this respect there is a change made in the law now in force. There is also a provision extending the time of commutation from fourteen months to three years: and I do trust that my friend from Arkansas will not object to that. The homestead law of 1862 contemplated a resident of five years.

Mr. PICKLER. I would like to know what paragraph the gentleman makes his point of order on.

Mr. HOLMAN. To the second paragraph.

Mr. McRAE. If I could make it to a part of it I might do it, but I made it to the whole of the paragraph.

Mr. HOLMAN. He made it to the whole of the second paragraph.

Mr. McRAE. Not in reference to the bonds.

Mr. HOLMAN. Now, Mr. Chairman, I wish to call the attention of the Chair to the fact that this legislation is based on an act of Congress providing for negotiations with these Indians for the cession of their lands and taking a portion of their lands in severalty. It is based on an act of Congress, and under all the circumstances it seems to me it comes within the rule, as it is carrying out an agreement made under an act of Congress, and it modifies that agreement and refers the subject back to the Indians. I did not think of this point being raised, or I would have had the law; but I would be very glad if the Chair will see the law under which this agreement was made and on which this legislation is founded before deciding.

The CHAIRMAN. The Chair will state to the gentleman from Indiana that the point of order, as stated by the gentleman from Arkansas, is that it changes the existing law under which this treaty was made between the Yankton tribe and a commissioner of the United States. Article 8 says that after the ratification of this agreement by Congress these lands shall "be offered for sale through the proper land office, to be disposed of under the existing land laws of the United States," etc.

Now, the gentleman from Indiana admits, as the Chair understands, that this is a modification of the existing laws of the United States, and that in that respect it differs from the treaty which has been agreed upon between the tribe and a commissioner of the United States.

Mr. HOLMAN. It is not only with reference to that provision, if the Chair please, and not only with reference to that article of the treaty, but here all the articles are modified and sent back to the tribe. The Chair will have to consider the existing law authorizing these negotiations so as to see whether this comes within the inhibition

Mr. PICKLER. Call the attention of the Chair to the words "as modified," on page 93, Mr. HOLMAN, and to see whether that is subject to the point of order? If it is new legislation, not included by the existing law, why the point of order is well taken.

Mr. HERMANN. If the gentleman will permit me, in the line of his argument, I desire to call his attention to the "general allotment act," which authorizes the Secretary of the Interior to do certain things by or between the Government and Indians. For instance:

And provided further, That any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such

reservation is held, of such portions of its reservations not allotted as such tribe shall from time to time consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and the said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress.

Now, the position of the gentleman from Indiana, chairman of the committee, as I understand it, is that all of this proceeding is in line with existing law.

Mr. HOLMAN. In line with existing law.

Mr. HERMANN. And this law authorizes the Secretary of the Interior to enter into negotiations with these Indians.

This particular paragraph includes matter which forms the substance of an agreement with the Indians, modified by these proceedings on the part of Congress, and therefore it is in line with existing law.

Mr. HOLMAN. This is an important provision and the question which it raises is applicable to some other provisions of the bill. I therefore suggest to the Chair that this second clause on page 94 be passed over for the present until we can look up the statute.

Mr. PICKLER. Nearly all of this section is a recital of the present law.

The CHAIRMAN. The Chair understands the objection of the gentleman from Arkansas to be to the proviso beginning in

(53 Cong. Rec. 6374)

line 9, page 95, and extending down to and including the word "entry," in line 14.

Mr. McRAE. No, sir. I make the point of order against the second subdivision of this section, because it can not be amended. If I could submit my amendments now I think I could make it conform substantially to the land laws, but as I can not do that, I am compelled to make the point of order.

The CHAIRMAN. The Chair hopes the gentleman will agree to let that go over also.

Mr. McRAE. I have not the slightest objection to that; with the understanding that the point of order is still pending.

The CHAIRMAN. The point of order is pending, of course.

Mr. HOLMAN. There are two other provisions that cover the same ground.

Mr. McRAE. I make the same point of order on the next paragraph.

The Clerk read as follows:

Third. That any person who was not the owner of land in any State or Territory of the United States at date of passage of this act may make an entry of the lands open to settlement under the provisions of this act, although said person may have heretofore made an entry under the provisions of the homestead law: *Provided*, That said person is not otherwise disqualified.

Mr. McRAE. I make the point of order on that paragraph.

The CHAIRMAN. The Chair suggests that the gentleman let that go over too.

Mr. McRAE. That is satisfactory to me, with the same understanding as in the other case.

The Clerk read as follows:

Fourth. That immediately after the passage of this act the Secretary of the Interior shall prescribe rules and regulations to procure the ratification by said Yankton tribe of Sioux Indians to the changes in said agreement, as provided for in section 1 of this act, and shall without delay, upon the agreement of said Indians to said changes, under such regulations as he may prescribe, open said lands to settlement, provided the settlers upon said land shall be required to pay 75 cents per acre at the time of filing upon same: *Provided*, That the proclamation of the President opening said lands to settlement, as provided in section 3 of this act, shall be issued within thirty days after the ratification of the changes in said agreement by said Indians, as provided in section 1 of this act, and that said proclamation shall be issued giving at least sixty days' notice of the date said lands will be open to settlement.

Mr. McRAE. I make the point of order on that also.

The CHAIRMAN. Without objection, this paragraph also will go over until tomorrow.

There was no objection.

The CHAIRMAN. The Chair calls attention to the fact that there is a duplication in the printed bill, beginning on line 10, page 108, and extending down to and including line 19, page 116.

Mr. HOLMAN. The committee are aware of that. That is a mere blunder of the Printing Office.

The Clerk continued the reading, and read the bill down to the word "Congress," line 23, page 127.

Mr. HOLMAN. Mr. Chairman, I move that the Committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the Chair, Mr. O'NEIL of Massachusetts, from the Committee of the Whole, reported that they had had under consideration a bill (H.R. 6913), the Indian appropriation bill, and had come to no resolution thereon.

* * * *

(53 Cong. Rec. 6419)

* * * *

INDIAN APPROPRIATION BILL.

The SPEAKER. Under the special rule the House will now resolve itself into Committee of the Whole on the state of the Union for the further consideration of the Indian appropriation bill, and the gentleman from Massachusetts will please resume the chair.

The House accordingly resolved itself into Committee of the Whole, Mr. O'Neil of Massachusetts in the chair.

The CHAIRMAN. The Clerk will proceed with the reading of the bill.

Mr. PAYNE. Mr. Chairman, before that I desire to state that my colleague, Mr. SHERMAN, a member of the committee, desired to submit some remarks on a paragraph of the bill, but was called away suddenly last night. He desires to have leave to print his remarks in the RECORD.

The CHAIRMAN. In the absence of objection, leave will be granted to the gentleman from New York.

There was no objection.

Mr. BARTHOLDT. Mr. Chairman, I desire to make the same request.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. HUNTER. I also, Mr. Chairman, as a member of the committee, ask the privilege of submitting certain remarks to be printed in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

The Clerk resumed the reading of the bill.

Mr. McRAE. Mr. Chairman, I make the point of order upon this provision in the bill which has just been read by the Clerk: The mineral lands shall be disposed of

under the laws applicable thereto, and the balance of the lands so ceded shall be disposed of until further provided by law under the town-site law and under the provisions of the homestead law: *Provided, however,* That each settler, under and in accordance with the provisions of said homestead laws shall, at the time of making his original entry, pay the sum of 50 cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of \$1 per acre, final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent.

Mr. PICKLER. I would like to understand what the point of order is made against.

Mr. McRAE. Beginning with line 21 after the word "law" on page 136 and down to and including line 9 on page 137.

Mr. HERMANN. Is it not too late now to make that point?

The CHAIRMAN. The Chair will also reserve the decision on that point of order. The Clerk will proceed with the reading of the bill.

The Clerk read as follows:

That immediately after the passage of this act the Secretary of the Interior shall prescribe rules and regulations to procure the ratification by said Indians of the Siletz Reservation to the changes in said agreement, as provided for in this act, and shall without delay, upon the agreement of said Indians to said changes, under

such regulations as he may prescribe, open said lands to settlement after sixty days' notice.

Mr. McRAE. I also make the point of order against that provision.

The CHAIRMAN. That also will be reserved for the present.

The Clerk read as follows:

SEC. 10. That to pay the expense of purchasing goods and supplies for the Indian service and pay of necessary employ'es; advertising, at rates not exceeding regular commercial rates, inspection, and all other expenses connected therewith, including telegraphing, \$35,000: *Provided,* That the office for purchasing goods and supplies and the principal depot shall be established at Chicago, and the bids shall be opened there.

The CHAIRMAN. This completes the reading of the bill.

Mr. STRAUS. Mr. Chairman, I desire to raise the point of order against the provision on page 138, beginning with line 1 and ending with line 3, the proviso to section 16. I make the point of order that this is new legislation and that it does not reduce expenditures. It makes it incumbent upon the Secretary of the Interior to establish a warehouse contrary to any previous regulations; consequently it does not retrench expenditures, but on the contrary increases them.

Mr. HARTMAN. I rise to a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARTMAN. Are amendments now in order under the Rule?

The CHAIRMAN. Not at present; a point of order is pending, raised by the gentleman from New York. The gentleman will please restate his point of order.

* * * *

(53 Cong. Rec. 6425-6426)

Mr. POST. Can I offer an amendment to the next section?

The CHAIRMAN. Not now.

Mr. BINGHAM. Do I understand that no amendment can be offered to any part of the bill preceding page 90?

The CHAIRMAN. Not until the unfinished business has been disposed of.

The Clerk read as follows:

Second. That the lands by said agreement ceded to the United States shall, upon proclamation by the President, be opened to settlement, and shall be subject to disposal only under the homestead and town-site laws of the United States (except section 2301 of the Revised Statutes, which shall not apply), excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common school purposes and be subject to the laws of the State of South Dakota: *Provided*, That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States, for the land so taken by him, in addition

to the fees provided by law, the sum of \$3.75 per acre, one-half of which shall be paid within three years from the date of his original entry; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections 2304 and 2305 of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid: *Provided, however*, That each settler shall be limited to 80 acres in amount, but after the expiration of six months from the opening of said lands to settlement, may take an additional 80 acres from any of the lands of said tract then subject to entry: *And provided further*, That after three years' actual and continuous residence upon said land from date of settlement, the settler shall, upon full payment of \$3.75 per acre, receive patent for the tract entered: *Provided*, That settlement shall be made under this act within thirty days from date of filing on land.

And provided further, That sections 16 and 36 of the lands ceded and relinquished by said agreement are hereby confirmed to the State of Oregon for the support of the common schools of said State under the limitations prescribed by law; the mineral lands shall be disposed of under the laws applicable thereto, and the balance of the lands so ceded shall be disposed of until further provided by law under the town-site law and under the provisions of the homestead law: *Provided, however*, That each settler under and in accordance with the provisions of said homestead laws shall, at the time of making his original entry, pay the sum of 50 cents per acre in addition to the fees now required by law, and at the time of making final proof shall pay the further sum of \$1 per acre, final proof to be

made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in homestead proofs as a prerequisite to title or patent.

The CHAIRMAN. On this the gentleman from Arkansas [Mr. McRAE] makes the point of order.

Mr. McRAE. The point of order applies to what has been read on pages 94 and 95, and to all of the paragraph on pages 136 and 137, beginning with the words "the mineral lands," in line 21, page 136, down to and including the word "patent," in line 9, page 137, and also to the lines from 14 to 20, inclusive, on page 137.

Mr. HERMANN. Mr. Chairman, I rise to a parliamentary inquiry. The gentleman from Arkansas did not make his point of order until after the Clerk had proceeded to read the last line on page 136, and about six lines beyond. His point of order, as I understand, applies to all after the words "provided, however," on line 25, page 136.

Mr. McRAE. No, sir; the point of order applies beginning at the word "law," on line 21, page 136.

Mr. HERMANN. Then I make the point that the gentleman did not make his point of order until after the Clerk had passed that point in the bill.

The CHAIRMAN. That was the proper time to make the point of order, after the paragraph was read.

Mr. HERMANN. But the Clerk had read six lines beyond that particular paragraph.

The CHAIRMAN. The Chair thinks the gentleman's point of order is in time.

Mr. McRAE. Now, Mr. Chairman, I will repeat what I have already said, that these provisions will change the manner of disposing of the lands treated for, and are therefore new legislation. This kind of legislation does not belong on an appropriation bill. So far as I am personally concerned, I wish these and all other treaties could be ratified, but when the Committee on Indian Affairs undertakes to change the public-land laws simply because we have ratified an agreement with an Indian tribe, I think it exceeds its jurisdiction. These provisions change the public-land laws in several particulars. They allow in some cases only 80 acres of land where the general law allows 160 acres, and in other cases they allow people who have no right to the benefit of the homestead law to take the benefit of it. They allow persons who have taken the benefit of the law and who have sold the land to speculators to enter under this act. They suspend the operation of some of the laws by making them inoperative here, and in many other important respects they change the public-land laws as to these reservations.

Now, I maintain that we should ratify these treaties, but that these provisions should go out, and instead of them we should, if necessary, enact a general provision for the disposal of the lands acquired by this act, or that may be acquired hereafter.

The CHAIRMAN. The gentleman claims that the provisions in this section interfere with the laws in relation to public lands now on the statute books. Are those

lands, before the treaty is confirmed, subject to the laws of the United States?

Mr. McRAE. Certainly not until the treaty is confirmed; but these provisions change the methods of disposing of the lands that will become a part of the public domain under these agreements and set up in every reservation a different system of land laws, a system under which, in Oklahoma, in the Outlet, and on other reservations, we have had the most outrageous scandals and frauds upon the honest settlers that have ever disgraced our Government. Now, in the face of the experience we have had, I feel it my duty to make the point and to warn this committee that there are in the bill provisions which will allow a repetition of those outrages. I will not quietly consent for the land laws of this country to be so changed as to make it possible for those outrages to be repeated. I want these reservations opened, but I want them opened in an orderly way under the existing public-land laws, or under some system adapted to the end in view, and I insist that we ought not to change existing laws in this way on an appropriation bill.

Mr. LYNCH. Mr. Chairman, the different propositions contained in this bill for disposing of the surplus lands on the several reservations are numerous, but in each instance they are conformed to the circumstances of the case as nearly as possible. I contend that this point of order is not well taken, because the lands to which these provisions apply are not now public lands of the United States. The Government has no interest in them, and it will have no interest in them until it acquires such interest by the ratification of each of the treaties separately. When that is done and the Government acquires these

additional lands it has a perfect right to prescribe the methods by which they shall be disposed of.

Mr. McRAE. But are the treaties themselves germane to an appropriation bill?

Mr. LYNCH. Entirely so.

Mr. PICKLER. Positively so.

The CHAIRMAN. The Chair thinks it is too late to make that point now.

Mr. LYNCH. The Government obtains these lands at different prices in different cases. By some of the treaties the lands cost 75 cents or 80 cents or \$1 an acre; and in one case, that of the Yankton Reservation, the Government pays \$3.50 an acre, so that it would have to sell that land for \$3.75 in order to come out even. These cases, therefore, can not all be provided for by any general uniform law.

Mr. McRAE. I think they can be. I think I have an amendment which will cover the whole matter, and could be adopted, I think at this time.

Mr. LYNCH. I have read the gentleman's bill and I wish it could be passed, but it is too important a matter to be considered and disposed of in the short time now at our command. If the gentleman can pass that bill, it can be modified as to include these cases, because its passage will be subsequent to this. These different methods of disposing of these surplus lands are absolutely necessary. In regard to the Yankton Reservation the committee were of the opinion that as the price of those lands was \$3.75 an acre, \$1.60 an acre would come too high for a poor man to buy, and therefore we concluded to reduce the

amount which one man could enter there to 80 acres. Each reservation was taken up on its own merits, and disposed of on its own merits, it being impossible to make any general rule or law applicable to all these cases. I contend that as the Government does not own the land now, it has a perfect right to acquire that land and dispose of it upon any terms that it may deem fit, regardless of existing law.

Mr. HOLMAN. Let me suggest to my friend that these contracts are made in pursuance of law; and his proposition simply carries the agreements into effect.

Mr. LYNCH. That is all. The Government finds itself the owner of those surplus lands, and must dispose of them. They are of no account while they remain in the possession of the Government. It seems to me that it is simply acting in furtherance of their acquisition to adopt limitations or restrictions in regard to their sale, and to dispose of them as may be deemed proper; and this I submit is not a change of existing law.

Mr. McRAE. It is new legislation; that is the point.

Mr. LYNCH. Well, everything is new legislation in one sense.

Mr. HOLMAN. The purpose is to carry out existing law.

Mr. LYNCH. Contracts are made according to law. The treaty is referred to Congress according to law - .

MR. TERRY. Allow me to ask this question: As soon as these lands were purchased under this treaty, did they not become a part of the public domain of the United States?

Mr. LYNCH. Not necessarily.

Mr. PICKLER. No; they are to be sold at \$3.75 an acre -

Mr. TERRY. Did not the United States purchase the land?

Mr. PICKLER. If they were public lands, under the homestead law they have to be granted to homestead settlers for nothing.

[Here the hammer fell.]

Mr. PICKLER. Mr. Chairman, I submit that the point of order made by the gentleman from Arkansas is clearly not well taken. We do not by this provision change one word or syllable of the public land laws of the United States. I ask the attention of the Chair to that proposition. We simply provide in this bill how these 168,000 acres of land acquired from the Indians shall be disposed of. It is impossible to dispose of this and under the public land laws of the United States. Why? Because under those laws every homesteader is allowed to take 160 acres, and, after five years residence thereon, to acquire title. Now in this case that is impossible. We acquire these lands at \$3.50 an acre, and dispose of them to settlers at \$3.75 an acre. So that the public land laws of the United States will not and can not govern this case.

Wherever there is an acre of public land subject to the public land laws of the United States we do not interfere with it or affect it in any particular. We simply carry out the agreements as modified by Congress. The point made against this proposition is not applicable. We are not attacking the land laws of the United States; we

are not proposing to vary in any way those laws as applicable to any portion of the public domain.

One other point, Mr. Chairman. We are not here by sufferance. In the Forty-seventh Congress Mr. Kasson, as Chairman of the Committee of the Whole, held squarely upon a point raised by the gentleman from Indiana [Mr. HOLMAN] – and I may say that as a parliamentarian Mr. Kasson has had few superiors in this House – that the ratification of a treaty where a commission had been appointed, and its action came before Congress for ratification, was in pursuance of a “public work,” and was therefore proper on an appropriation bill.

Now, if the ratification of a treaty is proper on an Indian appropriation bill, then whatever is necessary to carry out such an agreement is proper and in order. We are inevitably forced to that conclusion. If the treaty covered by this section is in order as it is, and would have been under this decision even if a point of order had been made against it – then whatever is necessary to carry out that treaty must necessarily be in order.

But, Mr. Chairman, my other proposition is too clear for argument. We do not interfere with the public land laws of the United States. We propose to take the only course possible to dispose of these lands; and the proposition affects no land but that which has been acquired under the conditions I have stated.

Mr. HERMANN. Mr. Chairman, inasmuch as this point of order applies to the provision pertaining to the allotment of lands to Indians in my State, the point is in some respects different from that which relates to the Dakota reservation.

Now, in the first place, I ask the consideration of the Chair to this fact – these are not public lands of the United States. They are lands belonging to the Indian reservations and to certain bands of Indians. They do not become lands of the United States at all until after the ratification of the treaty made with the Indians. Then and only then do they become subject to our land laws.

Now, as to the point made by the gentleman that this is new legislation, I desire to make the distinct proposition that this is in accordance with existing law, and that therefore it is pursuant to regulations already provided and strictly in accordance with such regulations. In order to convince the Chair of that fact I ask his kind attention to the act approved February 8, 1887, the law providing for the allotment of lands in severalty among the Indian tribes, in which will be found this provision:

All lands adapted to agriculture, with or without irrigation, so sold or released to the United States by any Indian tribe, shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona fide settlers only, in tracts not exceeding 160 acres to any one person, on such terms as Congress shall prescribe.

In reference to this proviso as to the Oregon Indians shore is no minimum fixed for the sale of the lands. The maximum limit prescribed by the homestead law is followed, 160 acres; but as to payments, terms, and conditions they are prescribed in this particular bill, and that authority is given by the general act of Congress providing for the allotment of lands in severalty to the Indians.

So, Mr. Chairman, all of the precedents are in line with existing law and not in contravention of it, and it occurs to me that the point of order the gentleman makes is not tenable.

Now, to show again the effect of it, it is provided here that \$142,000 shall be paid to these Indians for a large body of land; that \$42,000 shall come by way of appropriation; that \$10,000 shall be appropriated by the bill, and \$32,000 shall come from the sale of the lands; that in order to economize, the settlers shall pay \$1.50 an acre for the homestead land, and that they shall have have [sic] 160 acres of land and shall be required to reside on them according to the provisions of the homestead laws of the United States.

The Chair will perceive therefore, that there is nothing here in contravention of the existing law. It is pursuant to the well-known provisions of law regulating the homestead lands of the United States and is in strict accordance with the language of the provision of the general law which I have read, which provides that Congress may regulate the terms and conditions on which the land may be sold to the settlers after the lands are segregated from the rest of the Indian lands and become excess lands and subject to disposal by the Government.

But the first fact that I desire to impress upon the Chair is that they are not public lands of the United States; they are not governed by any of the public land laws until they become segregated from the Indian lands and become in fact a part of our public domain.

[Here the hammer fell.]

Mr. TERRY. Mr. Chairman, I think the point of order submitted by my colleague, Mr. McRAE, is very well taken. It seems to me, sir, very clear that the provisions contained in the bill are not germane to the treaty proposed to be ratified. A modification or a change to be germane to a contract or an agreement is one that in some way or other naturally affects the rights of both parties to the contract.

Now, the question as to how the United States shall dispose of these lands after she has acquired them is a matter with which the Indians have no concern, whatever, and therefore it shows very plainly that it is not germane to a question of contract.

Mr. HERMANN. Will the gentleman permit me a moment? As to the Indians not being concerned in the transaction, it is just the reverse. They can not obtain payment, according to the treaty, unless the funds are derived according to the provisions objected to by the gentleman from Arkansas.

Mr. TERRY. That is not in the treaty.

Mr. PICKLER. Oh, yes it is.

Mr. TERRY. You are putting it in here.

Mr. PICKLER. It is a modification.

Mr. TERRY. Of course, but the terms of the treaty provide that Congress should ratify or confirm the treaty terms and conditions, not as to how the lands should be disposed of, but how they should be purchased.

Mr. PICKLER. In the point of order against my bill, it is provided in section 8 that very thing.

But another question, if the gentleman will permit me. Does not the gentleman know that there has never been a treaty ratified by Congress in all these years, but the bill for the disposition of the land followed directly the treaty? It is universal.

Mr. TERRY. That may be, but it has nothing to do with the point of order.

Mr. PICKLER. And this bill was prepared by the Indian Bureau in accordance with the precedent. It is their bill.

Mr. TERRY. Very well; I have endeavored to answer the gentleman's question.

Now, as I say, the original act provided for a commission which was sent to negotiate the purchase of this land.

They have submitted a treaty, which has been signed by these Indians. If we wish to modify the terms of that treaty as to paying more or less for the land, or as to when the payment shall be made, etc., that is all germane; but to bring forward legislation as to what the United States shall do with the lands after they have purchased them is not germane to the proposition of purchasing them.

Mr. HERMANN. Will the gentleman indulge me again – and this is a very vital point? I ask the gentleman what is his construction of the provision of law which I have just quoted?

Mr. TERRY. I did not have my attention called to that.

Mr. HERMANN. That the specific act of Congress providing for the allotment of lands to the Indians, provided that as to the excess lands they shall be disposed of to actual settlers under the homestead "under such terms and conditions as Congress shall prescribe."

Now Congress is proposing to prescribe that under the general provision of the law these lands may be occupied by actual settlers, but one of the conditions shall be that they shall pay \$1.50 per acre at the time of final proof. Now, I ask the gentleman if that is not in accordance with existing law?

Mr. TERRY. Not now recalling the particular section to which the gentleman from Oregon [Mr. HERMANN] refers, I will leave the answer on that matter to my colleague [Mr. McRAE], who has just been examining it, and I now yield the floor to him.

Mr. McRAE. The section of the law read by the gentleman from Oregon, instead of being an authority for him, it is to my mind very conclusive against him. That law contemplates that when we acquire lands we shall dispose of them, as I am insist-

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ing we should, under the public land laws. The gentleman points to this law, which requires that they shall be disposed of under the homestead law, and yet he contends for a proposition in this bill which literally takes all the life and vitality out of it. That is what I complain of.

Mr. HERMANN. My answer to the gentleman is this, Mr. Chairman, that if that were the construction to

be placed upon this provision, then it would be necessary simply to say that they shall be acquired under the conditions imposed by the homestead act, but we go further, according to the language of the allotment act, and we are standing upon the allotment act, which provides for such terms and conditions as may be prescribed by Congress. Why insert those words if the lands were to be disposed of under the homestead act?

Mr. McRAE. The gentleman forgets that this is a point of order, and the question is, at what time and upon what bill shall Congress make or prescribe these conditions? The point I make is that it can not be done upon an appropriation bill. Now this is a very plain proposition, that does not, as my colleague has correctly and clearly stated, have any reference to the confirmation of the treaty; but it is a proposition to change the land laws, so far as these lands are concerned, giving men the benefit of the law who are not entitled to it, changing the time of residence from five to three years and depriving settlers of the right of commutation. Almost every important provision of the homestead law is changed. Men who have had the benefit of it can take it again under this bill, and gentlemen, will find that if these provisions are adopted the land jumpers and "sooners" will take every valuable piece of land that you open to settlement by it.

Mr. PICKLER. Oh, no.

Mr. LYNCH. Will they not take it under the homestead law just as well?

Mr. McRAE. Oh, no.

Mr. HOLMAN. Why not?

Mr. McRAE. This bill restores the right to those who have lost it.

Mr. HOLMAN. Mr. Chairman, I only rise to correct a mistake in the statement of my friend from Arkansas [Mr. McRAE]. There is no such change here as from five years to three. The act of the 3d of March, 1891, provided a period of fourteen months, and this makes it a period of three years. That is the only difference.

Mr. PICKLER. It is to prevent fraud.

The CHAIRMAN. The Chair is ready to rule. The Chair was of the opinion yesterday that perhaps the point of order was well taken, but he has given the matter very careful consideration last night and this morning, and the Chair wishes to direct the attention of the gentleman from Arkansas to the fact that the question whether or not a point of order would lie against a treaty in an appropriation bill does not now come up for consideration. It is too late to raise that point, and that has nothing whatever to do with the question before the House. Now, it is conceded by the gentleman from Arkansas that these lands are not public lands of the United States, and are not governed by the laws now on the statute books in relation to the public lands of the United States.

In addition to the Chair finds, upon looking at the matter, that it is the universal custom, in considering these treaties to modify and change them just as now being done in the present bill, and that is not only true of Indian treaties, as the Chair understands, but it is also true of other treaties. In fact, the Chair is informed that when the treaty between France and the United States

was made, by which the United States acquired the great territory of Louisiana, after that treaty had been made by the high contracting parties, the great Napoleon twice modified the treaty, and the Senate of the United States once modified it, before it finally became a law. It seems to the Chair, therefore, that in view of the custom which has existed from time immemorial in this country that the point of order is not well taken, and the Chair so rules.

Mr. WILSON of Washington. I rise to offer an amendment.

Mr. McRAE. I wish to offer an amendment.

The CHAIRMAN. The Chair desires to be perfectly fair, and he will first recognize the chairman of the committee to offer any amendment. This ruling cleans up the four points of order which were pending against the bill.

Mr. HOLMAN. Mr. Chairman, since the preparation of this bill -

Mr. McRAE. I understand the Chair's decision goes to all of these, the whole of them.

The CHAIRMAN. The Chair thinks the point of order against each is good on the same ground.

Mr. McRAE. That any kind of land legislation as to these lands will be germane. Is that the ruling?

The CHAIRMAN. The Chair so holds.

Mr. McRAE. Then, I wanted to move an amendment myself. That is the reason I asked the question.

Mr. HOLMAN. Mr. Chairman, I submit the following amendment in behalf of the committee.

The Clerk read as follows:

On page 7, line 8, after the word "Muscogee," insert the following language:

"And also provided that the Pueblo, Jacarilla Agency, in New Mexico, is hereby abolished and consolidated with the Southern Ute Agency, Colorado."

The amendment was agreed to.

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(53 Cong. Rec. 6435)

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The SPEAKER. It was a motion to recommit with instructions. It was all one motion. The Clerk will report the motion which the gentleman from Arkansas proposes to make.

The Clerk read as follows:

Strike out all of the paragraph on page 95 after the word "entry," in line 14, down to and including the word "land," in line 19.

Strike out all after the word "third," in line 20, page 95, down to and including the word "disqualified," in line 2 page 96.

Strike out all after the word "law," in line 21, page 136, down to and including the word "law," in line 23, and insert the following words:

"The remainder of the lands by said agreement ceded to the United States shall, upon proclamation by the President, be opened to settlement and disposal under the public land laws of the United States.

Strike out all of this paragraph after the word "acre," in line 5, page 137, down to and including the word "patent," in line 9.

Mr. SPRINGER. I make a point of order on that, Mr. Speaker. There are about half a dozen amendments there. None of them are necessarily connected with each other.

Mr. PICKLER. And they were held to be out of order in Committee of the Whole.

Mr. McRAE. Oh, the gentleman is mistaken. There was no opportunity to present them there. I made points of order against these and other provisions, which were overruled.

Mr. PICKLER. They were the same propositions substantially.

Mr. SPRINGER. It would not be in order in Committee of the Whole to move all these amendments together.

Mr. McRAE. These are not amendments. They are instructions to strike out certain parts of the bill. They are offered not as amendments, but as instructions to strike out certain parts, so as to make the bill conform to existing law and prevent fraud and injustice in the entries.

Mr. SPRINGER. There is a proviso there which changes existing law.

Mr. TRACEY. The gentleman's motion is not germane.

Mr. McRAE. Mr. Speaker -

The SPEAKER. This question is not debatable.

The question being taken on agreeing to the motion of Mr. McRAE, it was rejected, there being ayes 9, noes 130.

The question being then taken on the passage of the bill, there were, on a division (called for by Mr. GEAR) - ayes 137, noes 2.

Mr. GEAR. No quorum.

Tellers were ordered, and Mr. GEAR and Mr. HOLMAN were appointed.

Mr. PICKLER. I demand the yeas and nays.

Mr. HOLMAN. Oh, no.

The yeas and nays were not ordered.

The House again divided: and the tellers reported - ayes 158, noes 23.

So the bill was passed.

On motion of Mr. HOLMAN, a motion to reconsider the vote by which the bill was passed was laid on the table.

* * * *

(53 Cong. Rec. 8057)

* * * *

The committee of conference have been unable to agree on the following amendments of the Senate, namely:

* * * *

(53 Cong. Rec. 8058)

* * * *

On amendments numbered 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, and 114, which provide, as proposed by the Senate, for the payment in cash for lands ceded by the Yankton Sioux Indians of Dakota, the Yakima Nation of Indians in Washington, the Coeur d'Alene Indians in Idaho, and Alsea and other Indians on the Siletz Reservation in Oregon, instead of deferring such payments until after the lands shall be disposed of by the United States;

* * * *

(53 Cong. Rec. 8136)

* * * *

I must further state that the subjects upon which no conclusion has been reached involve \$2,447,766.49. There are only a few items involved, largely the appropriation of money for lands purchased from the Nez Perce Indians of Idaho and lands purchased from the Yankton Sioux in South Dakota, and lands purchased from the Siletz Indians of Oregon.

Those are the principal items in the sum of \$2,447,766.49 as to which no agreement has been reached. I ask the House to accept this report to the extent that agreements have been reached and to consent to the conference asked by the Senate on the remaining disagreements between the two Houses.

It is proposed by the Senate, in all of its amendments in relation to the purchase of Indians lands, that the United States shall pay 5 per cent per annum on the deferred payments. The House conferees insist that as the Government can borrow money at 3 per cent, and as the Government is now paying the Indians from \$1.25 to \$3 per acre for their lands instead of 40 or 50 cents in former years, this rate of interest is excessive. However, in any event, we must provide for these Indians; yet an admitted large obligation on the part of the Government, as to charges on the public Treasury for these tribes, in the opinion of the House conferees, would not be beneficial to tribes interested. No one can deny that the United States should deal justly and liberally with the Indian tribes, but we ought not to leave in their minds the idea that the Government must support them.

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(53 Cong. Rec. 8264)

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The SPEAKER *pro tempore*. The question on the motion of the gentleman from Indiana that the report of the committee of conference be adopted has not yet been submitted.

Mr. HOLMAN. Mr. Speaker, I wish to occupy a minute or two to explain a matter to which I ask the attention of the House.

Mr. LYNCH. Why not dispose of the pending motion to agree to the conference report as made?

Mr. HOLMAN. There is no objection to that, but before it is done I wish to occupy a minute or two.

Mr. WILSON of Washington. Now, Mr. Speaker, I move that we agree to the conference report as submitted.

Mr. LYNCH. I do not yield the floor, Mr. Speaker, for any gentleman to make a motion.

The SPEAKER *pro tempore*. The gentleman from Wisconsin refuses to yield. If the motion of the gentleman from Indiana [Mr. HOLMAN] prevails it simply ratifies the agreement reached by the conferees. After that has been disposed of, it will be in order to move that the House insist upon its disagreement on the other points and ask for a further conference. Then it will be in order to make a motion to recede from the disagreement, and the vote will be first taken upon the motion to recede.

Mr. MADDOX. After those two questions are voted upon, will the other one be open for discussion?

Mr. WILSON of Washington. Mr. Speaker, my motion has precedence over the second motion, as stated by the Chair.

Mr. HOLMAN. The motions come in this order. First, the motion on the adoption of the report itself -

The SPEAKER *pro tempore*. As the Chair understands, no motion has been submitted to the House except a motion to agree to the report of the committee of conference.

Mr. HOLMAN. Mr. Speaker, I overlooked a matter to which I wish to call the attention of the House, and I should feel very much mortified if, by an oversight on my part -

Mr. PICKLER. Who has the floor, Mr. Speaker?

The SPEAKER *pro tempore*. The gentleman from Wisconsin [Mr. LYNCH] has the floor.

Mr. HOLMAN. The gentleman from Wisconsin yields to me.

Mr. LYNCH. I yield the gentleman from Indiana five minutes to make some remark on the part of the report already agree to.

Mr. HOLMAN. The matter to which I wish to call attention is a matter of much moment -

Mr. WILSON of Washington. Mr. Speaker, I understand that the chairman of the committee of conference is entitled to the floor.

Mr. LYNCH. I yield five minutes to the gentleman from Indiana.

The SPEAKER *pro tempore*. The motion of the gentleman from Wisconsin [Mr. LYNCH] will not be in order until after the motion of the gentleman from Indiana [Mr. HOLMAN] has been voted upon. After that, the gentleman from Wisconsin will be recognized.

Mr. HOLMAN. Mr. Speaker, of course there can be no difficulty as to the order in which the votes shall be taken upon the several motions. First comes up for consideration the question of the adoption of the report of the committee of conference. After that two other motions are in order; one, that the House insist on its disagreement and ask for a further conference, and the other, that the House recede, and the latter question must be first put.

Now, the matter to which I wish to ask attention is this, and I especially ask the attention of the members of the Committee on Indian Affairs. It will be remembered that when the subject of those asphalt lands in Utah was under consideration a provision was inserted in the House bill fixing the minimum price at \$50 per acre. The Senate adopted an amendment, which will be found on page 147 of the printed bill, which reads as follows:

SEC. 20. That the remainder of the lands on said reservation, except lands containing asphaltum, gilsonite, or other like substances, which are hereby reserved from sale.

The House proposition was to sell, and we fixed the minimum price at \$50 per acre. It was supposed that these asphalt lands would be of very great value, and accordingly the House fixed that price. The Senate, on the other hand, determined to withhold the lands from sale, but finally they submitted a proposition to strike out the words "except lands containing asphaltum, gilsonite, or other like substances, which are hereby reserved from sale," which words they had themselves inserted, and then to provide for the disposal of the remaining lands under the homestead and mineral land laws of the United States. At the last meeting of the conferees the Senate abandoned that; but insisted upon these words:

That these lands shall be disposed of under the homestead and mineral laws of the United States.

The mineral laws being applicable to land containing asphalt and like substances. Now, the House conferees have receded from the disagreement on that point; so that the bill as it now stands authorizes the entry of those

asphalt lands under the mineral land laws, it being, however, provided at the instance of the House conferees that no one person shall be permitted to make more than two entries of 10 acres each.

Mr. LYNCH. There is no controversy over that provision.

Mr. HOLMAN. The House therefore understands that in adopting this report it adopts the provision authorizing the entry of these mineral lands under the mineral land laws, with this qualification, that instead of allowing 40 acres to be entered no one person can make more than two entries of 10 acres each, or 20 acres in all. This is all I wish to say.

Mr. LYNCH. I now ask a vote on adopting the report of the conferees so far as they have agreed.

The question being taken, the report of the committee of conference was adopted.

Mr. HOLMAN and Mr. LYNCH claimed the floor.

Mr. HOLMAN. The gentleman from Wisconsin [Mr. LYNCH] of course yielded the floor when he made his motion.

Mr. LYNCH. I yielded five minutes of my time to the gentleman from Indiana.

Mr. HOLMAN. If the gentleman wishes to be heard I will, of course, yield to him.

Mr. LYNCH. I decline to yield further at this time.

Mr. WILSON of Washington. The gentleman from Wisconsin lost the floor when the motion which he made was submitted.

The SPEAKER *pro tempore*. The motion indicated by the gentleman from Wisconsin [Mr. LYNCH] was that the House further insist on its disagreement on the remaining amendments and ask for a further conference with the Senate.

Mr. LYNCH. That is my motion.

The SPEAKER *pro tempore*. On that motion the gentleman from Wisconsin is recognized.

Mr. WILSON of Washington. I rise to a parliamentary inquiry. The gentleman from Wisconsin made a motion which was put to the House and adopted. Under those circumstances did not the gentleman lose the floor?

Mr. LYNCH. I beg the gentleman's pardon.

Mr. WILSON of Washington. Wait a moment. The Chair will decide this question.

Mr. LYNCH. I decline to yield further.

The SPEAKER *pro tempore*. It was upon the motion of the gentleman from Indiana [Mr. HOLMAN] that the conference report was agreed to. Before that question was submitted, the gentleman from Wisconsin [Mr. LYNCH] rose to a parliamentary inquiry as to whether a motion to insist upon the disagreement to the remaining amendments and ask for a further conference would be in order. The Chair stated it would be, but that the report must be

first disposed of. Having agreed to recognize the gentleman from Wisconsin to make that motion, he is now recognized for that purpose.

Mr. LYNCH. Mr. Speaker, during this session there have been submitted to both Houses of Congress seven or eight propositions to treat with the Indians. The Committee on Indian Affairs of the House has considered each of the treaties submitted to it and has agreed to three of those treaties. Having examined the provisions of each treaty separately, it has recommended the ratification of those three treaties with certain amendments proposed by the House committee. In each of those treaties we have changed the rate of interest from 5 per cent to 4 per cent, believing that at this time the Government ought not to be required to pay over 4 per cent interest.

We have applied the same rule to all those treaties, inserting this expense provision in each, and providing that in each case the treaty be submitted to the Indians for a ratification of the changes made.

Mr. PICKLER. Right there, allow me to ask whether the proposition of the House committee does not remit all these treaties back to another agreement with the Indians?

Mr. LYNCH. It is provided that the treaties shall be submitted again to the Indians for the ratification only of the amendments made by Congress.

Mr. PICKLER. And three new commissioners are to be appointed.

Mr. LYNCH. Oh, no; that is stating the matter entirely wrong.

Mr. PICKLER. That will be the result.

Mr. LYNCH. Not at all. The treaties as passed here will
(53 Cong. Rec. 8265-8271)

be sent back to the agent in charge of the Indians to procure their consent to the change, if possible; if not, then the treaties will fail.

Mr. PICKLER. That is just the point. We do not want the treaties to fail.

Mr. LYNCH. The question is simply whether Congress shall deal directly with the Indians or follow implicitly the action of the commissioners.

Mr. PICKLER. The question is whether Congress will in good faith carry out its agreements with the Indians or will go back on the contract of the Government.

Mr. LYNCH. Congress should not be subject to the whims or freaks of two or three commissioners.

Mr. PICKLER. Your Secretary of the Interior, one of the highest officers of the Government, sent out these commissioners to make these treaties.

Mr. LYNCH. It was his predecessor who sent them out, as I understand it. We have had instances in the past where commissioners went out and gave to the chiefs of tribes \$300 or \$500 or some other sum in the nature of a bribe. We have had that happen repeatedly. That is the way our commissioners have acted in certain cases. Now, I do not feel that we are bound at all by the action of the

commissioners, but that what they do is subject to our ratification.

Mr. PICKLER. Does the gentleman say that any of these commissioners bribed any of the chiefs?

Mr. LYNCH. Let the gentleman remember the Yankton-Sioux treaty and what was done in connection with it - a twenty dollar gold piece given to each head of a family as an inducement, or a bribe, to sign the treaty.

Mr. PICKLER. But does the gentleman assert that there was anything improper in the conduct of the commissioners in these cases?

Mr. LYNCH. I do not assert any such thing. I have only asserted what has taken place in the past within the knowledge of many of the older members of the House.

I claim that this House ought not to be bound for one minute by such action on the part of commissioners.

Mr. PICKLER. Then why did you send them out there?

Mr. LYNCH. Well, they go and they are very anxious to do something, and they do many things that they have no right to do, and make agreements by which they try to bind the Government when they ought not to do it.

Mr. PICKLER. Certainly these commissioners have general instructions from the Secretary of the Interior to do what they do. He lays down the rules and regulations to guide them, and fixes the general scope of their duties. The commissioners are understood to be acting within the rules laid down by the Department.

Mr. LYNCH. But there is very much left to their discretion, and they always make out to secure some kind of a treaty.

Mr. PICKLER. Well then, it is 5 per cent you oppose, is it?

Mr. LYNCH. I will tell you after a while.

Mr. Speaker, there are three of these treaties - one with the Siletz Indians, of Oregon; the Yankton Indians, of South Dakota; and the Yuma Indians, in which treaties the amount involved is small.

Mr. HOLMAN. The Yanktons is over \$600,000.

Mr. LYNCH. Well, the land is worth it. The committee went carefully over the bills, and particularly guarded everything connected with the treaties. Three of these treaties were put on the bill by the House, but when it went to the Senate that body put on another treaty with the Nez Perces Indians, in Idaho, and it is to that particular treaty that I wish to address myself a short time.

Mr. HOLMAN. We do not call it a "treaty;" it is simply an agreement or understanding.

Mr. LYNCH. Certainly it is a misnomer to call it a treaty; it is, in its present stage, only an agreement.

Mr. PICKLER. The same kind of a treaty we have always made.

Mr. LYNCH. The Nez Perces Indians, according to the last census, have a population of 1,838. They already have 1,900 allotments. You will notice, therefore, that there are more allotments of land than there are Indians.

The total amount of land in the reservation was 756,968 acres. There has been divided or allotted 182,234 acres to the Indians of the reservation and 32,660 additional reserved, leaving a balance of about 542,074 acres to be sold under this treaty. The price agreed to be paid is \$3 an acre for the whole 542,000 acres, amounting to \$1,662,000 and some odd dollars.

Mr. HAUGEN. How is that land, good or bad; and what the proportions of each kind?

Mr. LYNCH. I am coming to that in a moment. This treaty was made -

Mr. HOLMAN. This agreement.

Mr. LYNCH (continuing). By two men. One is Mr. Fenn, who was born in the county and lived there all his life; and the other is Mr. Sleicher, who has resided near the reservation for many years and is familiar with the country and its resources. The report says he is a "conservative man, a man of good judgment, as we are informed." Now, let us see how these two men differ as to the quality of this land and its value. Mr. Sleicher says that there are 350,000 acres of agricultural land worth \$3.75 an acre. That is the value put by himself upon it. He further says that there are 70,000 acres of timber and agricultural land worth also \$3.75 an acre. The other commissioner values that timber and agricultural land at \$5 an acre. Mr. Sleicher says, 70,000 acres of mineral land at \$5 an acre, and the other fellow, only 30,000 acres at \$5 an acre.

Mr. WILSON of Washington. Well, that is the price of all mineral land.

Mr. LYNCH. Mr. Sleicher says that there is some mountainous land on it which is of very little value; and Mr. Fenn says that there is a hundred thousand acres of mountainous land of nominal value - 50 cents an acre. And yet we are asked here to pay \$3 an acre for every acre of that land! That is the injustice of the proposition. Three dollars an acre for the good and the bad land alike. And we are asked to sell the agricultural land for \$3.75 an acre, and the mineral and timber lands at an estimate of \$5 put on two qualities of land, leaving us, of course, all of the bad lands on our hands for all time, because we will never be able to get rid of them.

Mr. PICKLER. May I ask the gentleman a question?

Mr. LYNCH. Certainly.

Mr. PICKLER. Does the gentleman suppose we will ever be able to buy these lands for less than \$3 an acre? I can only tell the gentleman that when you go again you will find that you will have to pay \$4 an acre for them.

Mr. CURTIS of Kansas. Will the gentleman yield for a question?

Mr. LYNCH. Certainly. -

Mr. CURTIS of Kansas. If that reservation is sold, and the bad land is left entirely out, does it not still leave a surplus to the Government?

Mr. LYNCH. Why, if you could sell all of the other lands at the estimates it would perhaps even up. But who believes, when these two commissioners differ so much in their estimates, one estimating that there is but a small quantity of mountainous land, and the other a hundred thousand acres of land of this character, and when they

are so wide in their estimate of the value of the land, who believes that we can rely upon such an estimate as that?

Mr. CURTIS of Kansas. Is it not a fact that one of the commissioners failed to estimate the hundred thousand acres, and that was put in by the committee at 50 cents an acre? The whole amount of land is accounted for by each, but differently classified and appraised.

Mr. LYNCH. He gives the whole of it here on the bottom the first page.

Mountainous lands, not estimated, about 46,000 acres.

That is the way one of them puts it.

Mr. CURTIS of Kansas. The other failed to estimate 100,000 acres, and the committee put it in at 50 cents an acre.

Mr. LYNCH. One of them estimates it at 46,000 acres and the other at 100,000 acres. But the point I make is that these commissioners agreed to pay altogether too much for that land, and that the Government will eventually lose a million of dollars if it approves of this treaty in its present form. The idea of buying a chunk of land out there in Idaho, 542,000 acres, and paying \$3 an acre for every acre of it, when the commissioners admit that from one-third to one-half is of little or no value!

Mr. PICKLER. There is no necessity to sell the lands until the Government can get that price for it, is there?

Mr. LYNCH. There is no guaranty that we will ever get that price or any other price for all the land.

Mr. PICKLER. Then we can hold the land?

Mr. LYNCH. Yes, and pay 4 or 5 per cent interest on it. That is not a very profitable transaction for the Government.

Mr. HAUGEN. If you remit this treaty back to the Indian agent, do you put a limit on the authority given to the agent as to price?

Mr. LYNCH. I certainly would.

Mr. HAUGEN. Do you do that now, in this proposed amendment?

Mr. LYNCH. No; there is no such proposed amendment; but, if I did, I would sell every foot of that land to the highest bidder, and give the Indians every dollar there is in it, and not let the Government make a dollar. I would give the Indians the whole benefit of it.

Mr. HAUGEN. When this treaty is remitted back to the Indian agent to treat anew with the Indians, how is it proposed to limit his authority?

Mr. LYNCH. By proper instructions from the Interior Department.

Mr. LYNCH. No amendments have been prepared to obviate the objections I have made.

Mr. HAUGEN. Are you going to prepare any? What I wish to know is, what it is proposed to do here?

Mr. LYNCH. To reject the treaty, for the present, and by proper amendments protect the interest of the Indians and the Government.

Mr. PICKLER. And then when a new treaty is made there will be a proposition to reject that?

Mr. LYNCH. Not if it gives the Indians all that belongs to them and the Government a fair deal. I think a treaty ought to be made by which the surplus lands there would be thrown open to settlement; but I am opposed to the Government paying what seems to me a clean million of dollars more for this tract of land than it will ever get for it.

Mr. HERMANN. This treaty has been made on the part of the Indians and on the part of the commissioners. That is, the two parties, the Indians and the commissioners, have agreed together. Now, if this treaty should be repudiated by us and sent back to them the same proceeding must be had over again.

Mr. LYNCH. As to the amendments only.

Mr. HERMANN. Now, does the gentleman believe that these Indians will agree to dispose of this land for a less sum than they have already done?

Mr. LYNCH. I suppose they will, and if they do not I would do the other thing, and I think the Government will come to the other plan in a very short time. That is, to sell all of these surplus lands under the sealed bid process; and if these lands are worth more than the price mentioned here, give it to the Indians. I want them to get every cent there is in it. This is a wealthy, prosperous tribe of Indians. They are now cultivating over 30,000 acres of land. They have 75,000 acres under fence. There are 1,900 allotments already made, and they are pretty well able to take care of themselves.

Mr. LUCAS. What is the aggregate price that it is proposed, under this treaty, to pay the Indians for the lands purchased?

Mr. LYNCH. Three dollars an acre for the whole reservation.

Mr. LUCAS. To pay the Indians that?

Mr. LYNCH. Yes, and to pay them right off, whether the Government sells any of the land or not. We have got to pay them that amount of money, or put it out at interest at 5 per cent.

Mr. LUCAS. That is the Nez Perce Reservation?

Mr. LYNCH. That is the Nez Perce Reservation. Now, in regard to the quality of the land, I want gentlemen who disagree with me about this to pay special attention to what the commissioners say. They say:

Much of the land, however, is fine agricultural land, worth perhaps eight or ten dollars an acre, while from one-third to one-half of it is of little value.

"Of little value" is the language they themselves use.

That is the judgment of the commission and in their report they say so -

That while some of it is worth from \$8 to \$10, that one-third or one-half of it is of little value.

That is undoubtedly true; and that is the point I make - that we are paying too much when we pay \$3 all around.

There is another thing. In the first place the Indians are allowed to take their allotments before anything is

done. They have selected the very choicest pieces of land on that reservation. The commissioners practically say so. They have gone all over it and picked all the land that has water or that can be watered, and they have got the cream of the whole reservation. Now, they want to sell the balance of that great tract of land to the United States for \$3 an acre and commence to draw their interest on it immediately whether the Government sells any of it or not.

Mr. PICKLER. Now, I want to ask the gentleman if that has not been the universal practice of the Government, and if we have not bought Indian lands during a period of time immemorial? Have we not also sold the lands to settlers? Is there anything new in that?

Mr. LYNCH. There is nothing particularly new about it; and it is all right where all the land is good.

Mr. PICKLER. The Government will have the land until it is paid for.

Mr. LYNCH. Yes; by paying interest on it. It is to a great extent not worth \$3 an acre.

Mr. PICKLER. The Government ought to stand by its agreement.

Mr. LYNCH. The Government did not make any agreement.

Mr. PICKLER. You are asking the government to repudiate its agreement.

Mr. LYNCH. There is no agreement to repudiate.

I want to say that there are 1,900 selections or allotments made already, every one of them a choice piece of

land. You gentlemen who have traveled through the Western country, on the borders of these mountains, have some idea of how broken the land is; and you know, after they have taken so many good allotments out of an area of twenty-three townships, nearly one hundred choice allotments in a township, the general character of the land left, for which \$3 an acre in cash is to be paid, can not be otherwise than a losing job to the Government. As to the quality of the land, the agent in his report in 1892, in speaking of the Indians as farmers and the quality of lands, says:

Owing to the many years of successive failure in raising crops the Indians have become heartily discouraged, and the progress or advancement made by them in this industry has been very slow. Nothing more could be expected of them when from year to year they have been compelled to contend with the many failures in raising their crops. This year is included with the preceding years of failure.

The hay yield this year would not average more than a half ton to the acre, and the yield of wheat and oats averaged not more than 7 or 8 bushels to the acre. This small amount of hay, wheat, and oats raised they were compelled to feed to their stock during the cold and severe months of last winter. They were compelled to buy the seed oats and wheat which they planted this spring.

From a tract of land of about 10 acres, which I sowed to hay for the purposes of subsistence for the agency horses, I was able to cut the insignificant amount of about 1 ton. These successive years of failure in raising crops is due to the hot

scorching winds with which this section of the country is invariably visited each summer.

While the Indians have made no great showing in the way of advancement or progress in this great industry, nevertheless it can be noticed, in some instances, that many steps forward have been taken by them. Consideration must be given the fact that they do not till or farm any large tract of land, but confine themselves mostly to the valleys and low lands, where only small tracts can be found that are tillable. When they have each received their allotment, and have placed such improvements as will enable them to live upon and cultivate the same, then, and not till then, will rapid and progressive strides be made by them in this industry, their chief revenue of support.

This is the report of the agent himself; but one objection to this treaty, taking the judgment of the men who made it, is the commissioners did not classify the lands, by putting a fair value on the good lands and a lower value on poor lands. My short experience on the Committee on Indian Affairs has taught me that in every instance the Government has lost in its deal by buying these lands of the Indians.

Mr. WILSON of Washington. Will the gentleman be kind enough to state a single [sic] case?

Mr. LYNCH. Why, in all of them. The highest price we ever paid was a dollar until the treaty with the Yankton Sioux Reservation came up; and even on that we shall lose. I am satisfied that about all of it is good land and will sell so that the Government will get out of it whole. But when you go out to the State of Idaho and pay \$3 an

acre for that immense body of land of which the commissioners in their report say "one-third or half of it is of little or no value," I can not see how you are doing justice to the Government when you do it.

Mr. HARTMAN. Will the gentleman allow me to ask him a question?

Mr. LYNCH. Certainly.

Mr. HARTMAN. If one-half of it is worth nothing and the other one-half of it is worth \$8 or \$10 an acre, how can the Government, purchasing it at \$3, lose anything by it?

Mr. LYNCH. Then let the Government confine itself -

Mr. HARTMAN. If one-half of it is worth nothing and the other half is worth \$8 or \$10, how can the Government lose anything by buying it at \$3 an acre?

Mr. LYNCH. If the Government could sell the lands worth \$8 to \$10 per acre it would lose nothing; but that is not the provisions of the bill. The Government is paying \$3 an acre for all of it and paying interest on the whole amount, with scarcely a hope of ever selling more than half.

Mr. HARTMAN. That is evading the question.

Mr. LYNCH. It is not evading the question. There is no proposition in the bill to sell the good lands for double what was paid for them. If there was, the question of the gentleman would be pertinent.

Mr. McRAE. The bill only fixes \$3 as the price to be paid for the land, and only land which is worth that will be taken at all, and it will be taken at that price.

Mr. WILSON of Washington. The gentleman is mistaken. Three dollars and seventy-five cents is the price for agricultural lands.

Mr. McRAE. Very well. The other portion of the land will be left on the Government's hands, so that we shall lose the value of all those lands which will not bring \$3.75 an acre.

Mr. LYNCH. That is, the Government will lose very nearly half the amount that it pays for these lands.

Mr. HARTMAN. I speak from the testimony that is printed and laid before the House.

Mr. LYNCH. I speak from that, too.

Mr. McRAE. If there was a provision, as the gentleman from Wisconsin [Mr. LYNCH] suggests, authorizing these lands to be disposed of for their full value, I suppose the Government might realize out of the part of them which it could sell the cost of the whole, but you can not sell half these lands for \$3.75 an acre and have the other half left on your hands without losing money.

Mr. HARTMAN. The statement is that about half of these lands is worth from eight to ten dollars an acre.

Mr. LYNCH. Oh, no; they do not say that. They say that much of the land is worth that.

Mr. HARTMAN. They say virtually that from one-third to one-half is worth that.

Mr. LYNCH. Not at all. You can not sell half those lands for \$3.75 and have the Government come out whole.

Mr. HARTMAN. One thing is certain, that if you put up the lands at public auction you will not get much for them.

Mr. LYNCH. That again shows the injustice to the Government. That is all the more reason why the Government should not approve this treaty at all. It is to this unfair feature of the treaty that I am opposed.

I am willing that we should buy this land upon any reasonable basis which will bring the Government out whole. I submit that the Government is under no obligation to pay such a price for this tract of land that it can not come out whole. You can amend this bill – and I will raise no objection to that – so as to provide for selling these lands to the highest bidder under the sealed bid system recommended by the Interior Department.

Mr. HARTMAN. That is for the benefit of the speculators.

Mr. LYNCH. No; for the benefit of the Government.

Mr. HARTMAN. The settlers will not get any benefit out of it.

Mr. LYNCH. Well, the Government ought to protect itself first. Speculators usually take care of themselves.

Mr. COOMBS. Is not the Government in this case becoming a speculator with the certainty of loss?

Mr. LYNCH. With a dead certainty of loss. Mr. Speaker, this whole system of buying lands must soon come to an end. It is not the proper method. Some of the land in those reservations is valuable, and it ought to be sold to the highest bidder, and the Indians ought to get

every dollar it brings, but much of this land is not worth a cent. It will lie there for centuries and nobody will pay the taxes on it.

Mr. TALBERT of South Carolina. What is the date of the treaty in this case?

Mr. LYNCH. It has been made within the past year.

Mr. TALBERT of South Carolina. Was it not made subject to ratification by Congress?

Mr. LYNCH. Certainly.

Mr. TALBERT of South Carolina. Then if Congress does not ratify it, I do not see how that can be called breaking a treaty.

Mr. LYNCH. It is not breaking a treaty. This is simply a proposition submitted by the Indians for us to act upon. Mr. Speaker, I reserve the balance of my time.

Mr. PICKLER. Mr. Speaker, I desire to call the attention of the House very briefly to the provision in this bill in relation to the treaty for the Yankton Sioux Reservation; and what can be said of that treaty can, in general terms, be said of the others. The proposition that is before the House to-day is very simple. We are needing more lands for settlement. By an act of Congress we provided for sending out a commission to treat with the Yankton Sioux Indians for their reservation. That commission was organized by the Secretary of the Interior and was sent out with general instructions.

The commission called together the chief men of the tribe. They were about a year, as I now remember, getting up this treaty, and finally they agreed with the Indians to

buy the lands upon certain terms, to pay them a certain amount for their lands, and they further agreed that on the deferred payments we were to allow them 5 per cent interest. That agreement comes here for ratification, and the proposition now is to abandon it and to go back to those Indians and say to them: "You got the best of us in that agreement, so we do not propose to stand by it; but we want to make a new treaty with you."

Mr. COOMBS. Were those commissioners authorized to bind the Government in any way?

Mr. PICKLER. Yes, sir.

Mr. COOMBS. Were they not merely authorized to see what could be done?

Mr. PICKLER. Now I hope the gentleman will not evade the matter in that way.

Mr. COOMBS. I do not evade anything.

Mr. PICKLER. If you are going to split hairs with these Indians when you treat with them, let me tell you it is not acting in good faith. The commissioners were sent out there under an act of Congress, and under instructions from the Secretary of the Interior. They called the Indians together and said to them, "We want to make an agreement with you." Of course it was understood that the agreement would come back to Congress for ratification, and the Indians were so told; but now we are complaining here that the Indians got the best of the bargain, and saying that we will not stand by it.

It seems to me Congress will occupy a humiliating position if it should say "We do not want to pay what we agreed to pay in dollars and cents."

Mr. COOMBS. But the commissioners had no right to make such an agreement.

Mr. PICKLER. They had the right; they were authorized by the Government.

Mr. COOMBS. They were authorized to go and treat -

Mr. PICKLER. The gentleman from New York [Mr. COOMBS], if he desires to do so, can join in voting these treaties down; he can join in breaking faith with the Indians. We have the power as a great Government to badger these Indians, to tell them that they must consent to whatever we say. That is the position which the question of the gentleman from New York would seem to indicate he desires to take. But there is no reason why these agreements should not be ratified. These commissioners went out in good faith; the Secretary of the Interior gave them their instructions; they kept within their instructions; they have made an agreement for these lands; and now Congress ought to live up to the agreement.

What will you tell these Indians when you send the matter back to them? What faith will they have in the Government under such circumstances? How will another agreement be arrived at? If the present agreement be sent back, then why may not a new agreement be sent back, and so continue to agree with the Indians and repudiate the agreements indefinitely?

Mr. TALBERT of South Carolina. If the action of these commissioners was final, if they had a perfect right to make an absolute bargain, why should it be necessary to bring these treaties back to Congress for ratification?

Mr. PICKLER. The commissioners had not the power to make an appropriation for the payments under these treaties; and therefore the matter must come back to Congress for final action.

Mr. TALBERT of South Carolina. It comes back, then, not for ratification, but for appropriation.

Mr. PICKLER. I will ask the House to observe that if we agree to the Senate proposition, a reasonable proposition, to which five out of the six conferees have agreed, we simply procure these lands in the same way we have always procured lands from the Indians. We make no departure from our past policy; we are following in the same line.

Now, a word as concerns the economy of this transaction. Upon the reservation now in question there is a deferred payment of \$500,000, upon which the gentleman from Indiana and the gentlemen supporting him think we ought to pay but 4 per cent interest instead of 5, as has been agreed upon. Now, there are about 1,750 of these Indians. They are poor. They have only this fund of \$500,000, which, at 5 per cent, will yield them only \$25,000 a year, which will not support them; and when their own means of support are exhausted the Government must support them. There is nothing, then, to be made by sending these treaties back. We will have to pay for their support in addition to this interest. Aside from the question of breaking faith with the Indians, aside from the humiliating position which we assume in declining to stand by the agreement of our own commissioners, there is no economy to the Government in any such line of conduct.

There is another very bad proposition in this bill as it passed the House, to which I am glad to see the Senate has declined to agree. Heretofore in all similar treaties within my knowledge, without any exception, the Government has always said, "We will pay the Indians so much money, and on the deferred payments we will pay a certain rate of interest;" and then the Government has taken the lands and disposed of them to the settlers. In other words, the Government has closed the contract with the Indians at the time of purchasing their lands.

But the gentleman from Indiana and others now propose, in the bill as passed by the House, to say to these Indians (they will never agree to it, however, I fear): "When we sell 100 acres or 1,000 acres, or 10,000 acres, we will pay you the money for that proportion of the land." In other words, it is proposed to open up a system of bookkeeping with the Indians; and if we do not sell the lands to settlers, then we are never to pay the Indians!

That is the position which the House took in the bill which it passed. But, gentlemen, that is not the correct way of doing business. You could not do business with white men in that way, much less can you do business in that way with the Indians. It has been the policy of the Government always in these treaties to close up the contract with the Indians and then to step in and dispose of the lands to settlers as it may deem proper.

So far as the Yankton treaty is concerned, there is no economy in such a policy as is now proposed. We shall in any event have to insure to these Indians a support, and the money derived from this treaty will not support them. There are about 1,750 of these Indians; and, as I have

said, the interest at 5 cent [sic] on the \$500,000 which they are to receive would be only \$25,000 annually.

Mr. COOMBS. What becomes of the remainder of the money - that portion in addition to the \$500,000?

Mr. HOLMAN. That is paid at once.

Mr. COOMBS. But what do they do with this money paid at once?

Mr. PICKLER. The Government is to pay them \$100,000, to be divided among them. Let me remind the gentleman from New York what is the uniform policy of the Government in these matters. The Government does not want to speculate off of settlers; so it buys lands from the Indians as fairly and as cheaply as it can, and then disposes of the lands to the settlers at such prices as will reimburse it for the money paid to the Indians. The aim always is simply to get back from the settlers the amount we pay to the Indians.

That is the policy pursued in all these cases. And until very recently the Government purchased the lands of the Indians and disposed of them to the settlers free, but lately it is charging the settler what it paid the Indians.

And while I am not so much concerned about the Nez Perces agreement, I want to say that if the settlers do not take these lands at once the Government will have them on hand. They are valuable lands, and it will be only a very short time before they will be disposed of.

In regard to the Yankton lands which are situated along the Missouri River, in the southern part of my State, splendid lands, these will be taken up at once. They

are as good farming lands as can be found anywhere. The Government will have the settlers' money coming into the Treasury at once from their sale.

Now, the proposition of the gentleman from Indiana - and I admire the gentleman as a financier, and as keeping down the appropriations of the Government - the gentleman from Indiana brings up the other proposition. He says that we must let this matter go back. He does not want to pay the Indians for the lands except as they are sold; and here is the whole point, and he will tell you himself. He wants the bill to show no increase in appropriations.

That was the argument before the Indian Committee, when we were almost compelled to agree to it; so if you say in the bill that we will pay the Indians as we get pay from the settlers for the lands, then of course we made no appropriation in the bill, and it shows no increase. But the Senate has said in an honest and a businesslike way, as we have always said in our dealings with the Indians, and in our treaties heretofore, we will pay you so much for the land; we will close the contract and have done with you, and then deal with the settlers.

Mr. WILSON of Washington. Will the gentleman yield for a question?

Mr. PICKLER. Certainly.

Mr. WILSON of Washington.

Supposing, now, we ratify the treaty to-day, is that binding on the Indians?

Mr. MAHON. Of course.

Mr. WILSON of Washington. Will that bind the Indian tribes?

Mr. PICKLER. Undoubtedly, if we ratify it.

Mr. WILSON of Washington. Then, is it not equally binding on the Government?

Mr. HUNTER. Of course, if we ratify it.

Mr. TALBERT of South Carolina. But suppose we do not ratify it.

Mr. PICKLER. The question of the gentleman from Washington is well put. We have gone out there with our machinery of the Government, and the Indians understood that they represented the Government. They were allowed to believe that such was the case.

It was the Indians who were hard to get into the agreement; and they understood that when they agreed with the Commissioners there would be no difficulty about the ratification of the matter by Congress. They were led to believe that such was the case. There has never been such an attempt heretofore to defeat an agreement of that character. It was a fair agreement, and those representations were made to the Indians as the basis of the agreement. If we were paying twice what we are paying the Indians in this bill, we could not afford to break faith with them and repudiate the contract and agreement as we are doing if we deny these contracts and refuse to ratify them now.

We could not afford to do it for three times the amount involved in the bill. We must act with them in good faith. The Indians understood that the commissioners were empowered to deal with them. Let us, then,

stand by our agents and by the agreement our agents made. They made a good contract; and let me say to you, gentlemen, that if you defeat these treaties (and these are treaties, just as all other cessions of land have been), then you may appoint all the agents you want and send them out there, but they will never make an agreement again as fair to the United States as this one is.

You can not buy these lands cheaper than the commissioners have agreed with the Indians to pay for them, and the probability is that you will pay a great deal more if you do not take advantage of this opportunity. We have been dragging along for two years out in our country trying to settle the matter; the people want the land, and therefore let us end the trouble now by receding from the disagreement to the Senate amendments. Let us settle with the Indians at once and give the settlers all over this country who want homes an opportunity to secure them.

Let us agree with the Senate conferees. It is no difference in the end to the Government. The only question is whether we will settle up with the Indians now or keep books with them and pay them hereafter as the lands are sold, supposing they would so agree. You will never agree to such a proposition, I trust, as that which has been suggested by gentlemen who oppose these treaties.

I hope the House will recede from its disagreement.

Mr. MADDIX. Mr. Speaker, when I first went into the Indian Committee room and heard these agreements discussed I thought they were something binding on the Government, but I soon found to the contrary and that that impression was not true.

Now, as a matter of fact, as I understand the functions of these commissioners or agents sent out amongst the Indians, it is simply to find out a basis of agreement; in other words, negotiate a trade with the Indians and then the matter is referred to Congress, whether we will accept the terms proposed or not. We are not bound, as I understand the gentleman from South Dakota to maintain, by any obligation, legal or otherwise, to carry out such an agreement. It is simply a proposition made to us for legislative action.

Mr. HOLMAN. Undoubtedly. Why, what did we do in the Cherokee Outlet case?

Mr. MADDOX. And as the distinguished gentleman from Indiana [Mr. HOLMAN] tells me, there has been scarcely a treaty made with the Indians which has not been amended in some way by Congress before its ratification.

Mr. PICKLER. The gentleman, I think, is mistaken. The exceptions are largely the other way.

Mr. COCKRELL. Will the gentleman allow a question?

Mr. MADDOX. Certainly.

Mr. COCKRELL. Are the Indians bound by this treaty?

Mr. MAHON. That is the question. Are the Indians bound by it now?

Mr. MADDOX. They are bound by it if we do not change it and accept it.

Mr. COCKRELL. Suppose we do not ratify it - can they get away from it?

Mr. MAHON. I hope the gentleman will answer that question. Can the Indians get away from it whether we ratify it or not?

Mr. COCKRELL. That settles the question.

Mr. MADDOX. We are not bound to accept or ratify the treaty at all. We are not compelled to do it by any means. The gentleman from South Dakota maintains that the House itself is in honor bound to do it; that the Government itself is in honor bound. But if that be so why is it here? Why are we discussing it at all?

Mr. PICKLER. Does the gentleman say it is not in honor bound? Are we playing with these Indians? Were we playing with them when we sent the commissioners out there?

Mr. MADDOX. No; we are not playing with these Indians. We are simply trading with them; and if the trade does not suit us, we are not bound to accept it. That is the common English of it. Now, what are we asked to do? The House committee adopted a principle which we are insisting upon here.

We did not think this Government was in a condition to appropriate money to buy these public lands to be sold at mere haphazard. We did not think that was proper, and we provided that these lands should be sold, and that as fast as they were sold and the money received from the sales it should go to the credit of the Indians. That was the principle which governed the Committee on Indian Affairs of the House.

Mr. TALBERT of South Carolina. And they to get interest in the mean time [sic]?

Mr. MADDOX. Oh, yes; at 4 per cent.

Mr. PICKLER. Does the gentleman think that would be a satisfactory way of doing? Suppose some of these lands were not sold for twenty-five years. We should have to keep an account with these Indians for twenty-five years.

Mr. MADDOX. Very likely, and we have accounts with them now, which have been running that long, and longer yet. But we have been told by gentlemen advocating the ratification of these treaties – and we are told in this House to-day – that these lands will be taken up at once.

I think the gentleman from Wisconsin [Mr. LYNCH], my colleague on the committee, has demonstrated the fact to this House that they will not be taken, and that the government will lose largely in this transaction. Now, the question that presents itself to the common sense of this House, and especially to this side of the House, is whether we can appropriate \$2,500,000 to buy a lot of Indian lands that we have no present use for, when at the same time we are borrowing money and selling bonds in order to run this Government? That is the question that I want you to consider. That is the question that presents itself to our minds; whether you are ready to do that or not.

Now, we are not obliged to accept this contract. We are not obliged to open up this land. The truth of the matter is this: We have now got a bill before this House

and before our committee asking the Government of the United States to pay taxes upon the Indian lands in those States and counties where they have been allotted – actually to bear the burden of local taxation, and yet you want to open more, adding an additional burden to the Government.

Mr. PICKLER. That is where lands are allotted to the Indians.

Mr. MADDOX. I understand that. And now you want the lands allotted here.

Mr. PICKLER. Oh, no.

Mr. MADDOX. You want these lands allotted.

Mr. WILSON of Washington. They are already allotted.

Mr. LUCAS. They have been allotted.

Mr. MADDOX. And as soon as they are opened up to settlement you will come in and ask to have the taxes paid, just exactly as you have done in other locations of the same character, where you are now absolutely asking the Government to pay the taxes on the Indian lands to help support the counties. That is the next thing to follow.

Now, Mr. Speaker, it is unnecessary for me to go into details in regard to our objections to this matter, because they have been so ably presented by the gentleman from Wisconsin [Mr. LYNCH] that I am satisfied that the members of this House understand this question and that they will not recede, but that they will insist that if these treaties are to be ratified at all, they shall be ratified in

accordance with the terms laid down by the House committee, which is that as fast as these lands are sold and paid for the Indians shall be given credit for the moneys so paid. Or if that is not acceptable to them, why, they need not accept it. That is my position and my proposition. We are not obliged to accept this agreement. We are in no condition to accept it.

Mr. PICKLER. Oh, we have the brute force to go back on the Indians, of course, if we want to.

Mr. MADDUX. We are not going back on the Indians.

Mr. PICKLER. That is exactly what we are doing.

Mr. MADDUX. If we do not accept the contract, if we do not buy the land, the Indians will still have the land. They will still have title to it.

Mr. TALBERT of South Carolina. It will not take anything away from them.

Mr. PICKLER. What are we doing, then? Is this boy's play?

Mr. MADDUX. The lands will remain in the same condition in which they now are. The Indians never have done anything with them yet, and it will not disturb them at all; and from the argument made by the gentleman and those who agree with him, it is said that we have got to support them anyway. The question is whether we are willing to advance this money - to appropriate \$2,500,000, when, as I have said, we are already borrowing money to run the Government? Ought we to make this appropriation for something that is unnecessary?

Mr. PICKLER. Will the gentleman allow me a question right there?

Mr. MADDUX. Yes.

Mr. PICKLER. Does not the gentleman know that it is only of very late years that the Government has taken money from the settlers at all for public lands? Does not the gentleman know that heretofore we have bought the lands of the Indians and given the lands to settlers? Now we are buying land from the Indians and selling it to the settlers, and in that way getting our money back. It is only within the last few years that we have done this, but now we are making ourselves whole by selling the lands to the settlers for all that we pay the Indians for it.

Mr. MADDUX. But I say we have come to that period in our history when we should change our policy again, and that is, that Congress ought not to buy any more of these lands from the Indians and sell to the settlers, but let the settlers deal directly with the Indians.

Mr. PICKLER. That is impossible.

Mr. MADDUX. I do not think so.

Mr. PICKLER. The settler can not deal with the Indians.

Mr. MADDUX. It will not be but a few years when we will have but little of the public domain left. There are three or four other treaties to follow; and under this precedent you are about to set it is not only a question of \$2,500,000. It will not stop at \$8,000,000 when we get to the other treaties to be ratified and the money to be paid under them. When you are talking about this question of

interest you will remember that; and when you are talking about appropriations for advancing the money, you will remember that others are to follow.

Mr. WILSON of Washington. Will the gentleman allow me to ask him a question?

Mr. MADDUX. Certainly.

Mr. WILSON of Washington. In the last Congress a very important matter came up from your section of the country.

Mr. MADDUX. Mine?

Mr. WILSON of Washington. Yes, sir; to your whole section of country. I think every member upon this side of the question, with the exception of the gentleman from Mississippi, was in favor of the purchase of what is known as the Cherokee Outlet at an expense of \$8,000,000. Now, your people were greatly interested in that.

Mr. MADDUX. My people!

Mr. WILSON of Washington. Your whole section.

Mr. MADDUX. I did not know that my people were interested in that.

Mr. WILSON of Washington. Maybe not directly, but indirectly. It will be of great advantage to you in the future. You were interested in that the same as I am interested in this. You received about all the Western votes, because it was right and proper and just for the benefit of the settlers of your section; and we think to-day that your people should meet us half way in the development of our section of the country.

Mr. MADDUX. Now, as the gentleman has raised that question I will state that we had no interest in it. We have got none of it and did not have any interest in it so far as that is concerned. Now, there is about 6,000,000 more acres to be opened up, and this House will remember that we went forward and made a treaty with the Cheyennes and Arapahoes and paid them for their lands according to the treaty and acts of Congress. We paid \$2,900,000 to the Choctaws and the Chickasaws for the same land. That is another proposition that I want to call your attention to. Two million nine hundred thousand dollars we paid to get a title to that property.

Mr. HUNTER. And have not got the title yet.

Mr. MADDUX. And we have not got the title yet. We have two treaties. We have the treaties with the Comanches, the Kiowas, and the Wichita and affiliated bands, which will probably cover about 4,000,000 acres of land; and they have the same interest in this land that they had to the Cheyennes and Arapahoes Reservation; and if we are asked to ratify those treaties, according to the gentleman from South Dakota and the gentleman from Washington, we are bound to do so when we have a precedent before us that the Government had paid twice for this land and will be called upon to do the same thing again unless the question of title be settled before we indorse the action of our commissioners.

Mr. WILSON of Washington. When was that treaty first made with the Arapahoes and Cheyennes?

Mr. MADDUX. I think it was four or six years ago.

Mr. WILSON of Washington. That was the first. When was the one made previous to that?

Mr. MADDOX. I do not remember; away back.

Mr. WILSON of Washington. Away back.

Mr. HUNTER. In 1820.

Mr. MADDOX. The treaty was made with these Choctaws and Chickasaws in 1820, and the Cheyennes and Arapahoes claimed title under Executive order and by right of possession, and the Choctaws and Chickasaws claimed that they only ceded these lands in trust to the Government to locate friendly Indians on, and when open for settlement to the whites that the title reverted to them.

Mr. WILSON of Washington. I will not interrupt the gentleman further with questions at this point, as I see that it disturbs him; but I desire to reply to some things that he has said before the debate closes.

Mr. MADDOX. So you will see that there is another question which opens itself up for the consideration of this House; and behind that is the proposition that the Government is bound to accept this treaty or agreement. It is no longer a treaty, as the Supreme Court says it is not a treaty, but an agreement, and that the consent of this House and of the Senate is required in order to ratify that agreement and make it a contract. It is not a contract and binding upon this Government until we do consent, and the question is whether you will consent to ratify it or not. If you do not do it, it is not a contract with the Indians.

Now, even if that side of the House or this side of the House, as the case may be, does believe that this agreement ought to be ratified, I ask you gentlemen again, Is this the acceptable time to do it? Is this Government in a condition to do it? That is the question for you to consider. I claim that we are not in a condition to do it at this time.

Mr. HERMANN. Will my friend, who is, I believe, a member of the Committee on Indian Affairs, permit me to make a suggestion? Take the case of a reservation that has not been enlarged upon by any member on the floor to-day, one which lies within my own State, the reservation of the Siletz Indians. I wish to point out to the gentleman the injustice that will be done to those Indians if we do not recede from our disagreement to the Senate amendment.

Those Indians agreed to receive \$142,000 for their surplus lands. The Government, through its agents, agreed to pay them that amount. The money was to be paid out of the Treasury of the United States, \$100,000 of it to be deposited at 5 per cent interest for an indefinite length of time, and \$42,000 to be paid to the Indians individually as they came of age, \$75 per capita. Now, those Indians have had their lands allotted to them. They are there assuming that they have title to the lands which they have received by allotment. The House proposes that the Indians shall receive their pay out of the sale of those lands at the rate of \$1.50 per acre.

The fact is that the Indians have selected the best lands in that reservation and the balance is comparatively refuse land, so that very few people will pay anything for

it at this time, for the reason that it consists largely of mountain ranges which at some time or other have been burned over, so that the land is not valuable either for timber or for agricultural purposes. It is utterly impossible, therefore, within any reasonable length of time to realize out of the sale of those lands even a small percent of the amount of money that we have agreed to pay the Indians. Now, the gentleman will see that if this agreement is not ratified at the present time and is again submitted to the Indians for reconsideration, they never will agree to any better terms than they have agreed to already, because they will know that if the money is to come out of the sale of the lands it will not be realized within the present generation.

The bill was submitted to the House over a month ago. I have heard from the Indians, and I have taken some pains to ascertain public opinion as to the value of these lands. Many people have gone upon them for the purpose of taking appropriate locations to be homesteaded, but they have declined to take the lands and have given their opinion that they are worthless for homestead purposes.

Now, I submit that a refusal to recede from our disagreement to the Senate amendment will render it utterly impossible for us to treat with those Indians hereafter for those lands. And see the position that we shall leave them in. They have their allotments upon which they are living, believing themselves to be entitled to them, and the surplus lands are left upon their hands with this condition attaching to them.

Mr. COOMBS. Is not the gentleman's own statement an admission that by this treaty the United States is buying worthless lands from these Indians, after allowing them to take up the best part of the reservation by allotment? Upon what principle can the gentleman justify such legislation?

Mr. HERMANN. I desire to say that that is the consideration that is being paid to these Indians for the excess lands.

Mr. COOMBS. But, according to the gentleman's own statement, those lands are worth nothing. He has just told us that settlers have gone upon them and have declined to take them.

Mr. HERMANN. Ultimately those lands will be valuable; but I say that at the present time and for many years to come we can not realize the money that we are to pay Indians from selling the land at \$1.50 an acre. Now, in the meanwhile, how are those Indians to be paid the consideration which has been promised to them? That is the question.

Mr. MADDIX. It seems to me that the question, or rather the speech of the gentleman from Oregon shows clearly that my position in this matter is correct. It appears that we have sent agents out there to negotiate for lands which, according to the gentleman's own admission, are absolutely worthless. As to the position of the Indians, if we refuse to ratify this agreement the Indians have got just what they had before; they have got their entire reservation; we have not hurt them in any way. According to the gentleman's own statement, these lands are worthless at the present time.

Mr. HERMANN. No. What I say is that at the present time, and in the present financial condition of the country, you can not sell such a large body of land as that and realize the amount that is to be paid to the Indians. Ultimately the lands will undoubtedly be disposed of at a good price.

Mr. COOMBS. But did you not say a while ago that settlers had gone upon those land and had declined to take them as worthless?

Mr. HERMANN. I say that large bodies of people will not settle upon those lands at the present time. Ultimately I believe those lands will be disposed of, but it will take a considerable time, and meanwhile the Indians desire some assurance that they are to receive the money that has been promised them.

Mr. LYNCH. Does the gentleman think it is fair or proper that the Government should pay \$3 per acre for such lands and pay 5 per cent interest on the deferred payments when, according to his own statement, the lands will not sell for \$1.50 an acre?

Mr. HERMANN. The Government is not paying these people \$7 an acre, but only 89 cents an acre; and the Secretary of the Interior certifies to Congress that the Government is making the difference between 89 cents and \$1.29 an acre, amounting to something over \$20,000. That is so much to the credit of the Government of the United States.

Mr. MADDUX. I think, from what the gentleman from Oregon [Mr. HERMANN] has said, that we have negotiated a very bad trade with the Indians; and the

question is whether this House should ratify that trade. According to the admissions made here, a considerable portion of this land can not be disposed of at the present time. Now, we should take into consideration the financial condition of the Government. Is it in a condition to purchase land on credit and pay interest on the purchase money?

Mr. PICKLER. This will bring to the Government more money than it pays out.

Mr. HERMANN. Allow me to ask the gentleman from Georgia [Mr. MADDUX] whether there is any reservation in the United where all the surplus land could be disposed of immediately at a good purchase price?

Mr. MADDUX. Is there any portion of this that may be disposed of at once?

Mr. HERMANN. There is.

Mr. MADDUX. After the allotment?

Mr. HERMANN. I am speaking entirely of the surplus after the allotments have been made. A considerable portion of these lands which have not been disturbed by fire contain timber, and can be readily disposed of. But I was speaking of the possibility or probability of realizing \$142,000 at once to pay these Indians. I say it can not be done in the present condition of affairs.

Mr. COOMBS. Why should we want to do it?

Mr. HERMANN. In order to settle the title of these allottees who have taken land in good faith, and in order to settle titles generally.

Mr. PICKLER. Some things which have been said here would leave the impression that this transaction is actually going to take money out of the Treasury. I say it will bring more money in than it will take out.

Mr. HERMANN. Ultimately it will.

Mr. PICKLER. No, now. We pay only a small amount of money down, and give bonds for the balance. Then the applicants for these lands pay into the Treasury three times as much as we take out.

Mr. MADDOX. But I protest against the policy of issuing bonds to put money into the Treasury.

Now, I think it has been clearly demonstrated that this is a bad trade for the Government. The question is whether we shall ratify it or not. The agreement is not binding upon the Government until we do ratify it. In the present condition of the Treasury should we now go forward and ratify this trade, appropriating for the purpose \$2,400,000? I think not.

Mr. WILSON of Washington. Will the gentleman from Georgia [Mr. MADDOX] yield to me for five minutes?

Mr. MADDOX. Yes, sir. I yield five minutes to the gentleman from Washington, and reserve the residue of my time.

Mr. WILSON of Washington. Mr. Speaker, I express my thanks to the gentleman from Georgia for kindly yielding to me at this time. I desire only to call attention to one or two things stated by the gentleman from Wisconsin [Mr. LYNCH] in the course of his argument.

Of course, Mr. Speaker, the ratification of these treaties is of the greatest importance to our section of the country. I have seen this reservation; I think I know something about this matter, and it is my judgment that the Government of the United States, notwithstanding the statement of the gentleman from Wisconsin, has made an exceedingly good bargain with reference to those lands. I know of my own knowledge that within thirty-six hours a company could be formed to pay \$3 or \$3.75 for every acre of this land if the Government would permit that arrangement to be carried out.

The gentleman talks about half of this land being of no value. That statement is not correct as a matter of fact. As shown by the report of the committee, the agricultural lands are estimated to embrace 350,000 acres, amounting, at \$3.75 an acre, to considerably more than \$1,000,000. The timber land, which has been stated to be worthless, is in my judgment the most valuable portion of this reservation, because in that section of the country timber is exceedingly scarce; and whenever you can secure a tract of timber land it sells promptly.

Such land would quickly bring the price estimated here. The mineral lands would sell, of course, under the mineral land law at \$5 an acre. Here you have in this reservation 350,000 acres of valuable agricultural land, which the Commissioner has estimated to be worth from \$8 to \$10 an acre.

Consequently, it is my judgment that the Government, taking those lands and selling them as provided for in the treaty and in the bill, at \$3.75 an acre, will recoup itself every dollar of all of the expenses attending the

transaction. I believe that every acre of the agricultural land will be taken up within thirty days after the reservation is opened.

All over the State of Idaho – and the gentleman from Wisconsin [Mr. LYNCH], speaking of the land as being in Idaho, would seem to be trying to establish the idea that the lands of Idaho were of no value – all over Idaho are valuable lands. Why, Mr. Speaker, in the Pan Handle district of Idaho, which is as large as the entire State of Maryland, there are over over [sic] 10,000,000 acres of valuable timber lands.

There are in the Pan Handle counties that produce more wheat to the acre than any land on the habitable globe. There are mines also which have produced wealth in the last five years enormous in amount. And this reservation is standing as a block in the way of the development and progress of the country. That is one reason why it is so important that action, and prompt action, should be taken upon this treaty.

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. WILSON of Washington. I hope the gentleman will yield to me a few moments longer.

Mr. MADDOX. I will yield five minutes more.

Mr. WILSON of Washington. Now, I think, Mr. Speaker, that it is exceedingly unfair, it is exceedingly unjust to this people out there, that Representatives on this floor should come in here and state to people who do not know anything about the facts that those lands have

no value, and that the Government will lose a million dollars or more by the transaction proposed.

Why, both of the commissioners who made this agreement with the Indians, taking the highest and the lowest estimate they have made, show that the Government will receive according to the highest estimate \$2,025,000, and the lowest \$1,860,776. Is it fair then, in view of these facts, to say that those lands are of no value? Is it fair to take the judgment of those men residing there who know the value of the lands, who know their quantity and who give us these figures as the result of the transaction? I think it is fair. I think we ought to take it. I think they were competent to make the estimates.

Will the Government lose anything when we get an estimate of \$1,800,000 from the lowest estimate, and over \$2,000,000 from the highest? Where is the ground for the ascertain? The whole basis of the argument of the gentleman from Wisconsin; the whole argument of gentlemen who have discussed in opposition to the ratification of those treaties, is an argument which is designed for the purpose and the sole purpose of defeating their ratification. They say, or that is the inference to be gathered from their remarks, whether we will make anything or not, "we do not propose to ratify the treaty." Mr. Speaker, that is no way to deal with such a question.

I spoke awhile ago of the opening of the Cherokee Outlet. In the course of business in the last Congress it was my good fortune to be a conferee on the bill which provides for the ratification of that treaty and which was talked over fully in conference. It was talked over in the

House, and it was contended that we were paying \$8,000,000 on the ratification of that treaty, and so in order to obviate the adding of that amount to the bill we agreed that they might sell the land or the certificates, and that the Government would hereafter appropriate for it.

Yet to-day we have come here and ratified an agreement whereby the purchaser of that certificate might receive a bond from the Treasury of the United States in payment for it: That was all done simply "to beat the devil around the stump." that is all. But we opened the Outlet; and the opening of that section of the country I voted for. I am glad to vote for anything in Oklahoma or Texas or Alabama or Georgia that will advance the prosperity of that people.

I hope in return that they may be as generous to the people of the West, and help us to develop that empire, and throw open the reservations of the Government, giving the Indians their allotments, teaching them how to sow and reap and raise crops, and throwing open the lands to the settlement of the whites, letting them get homes, and in this manner shedding the blessings of civilization upon our Western country.

Why should you retard the growth of that section? There is not an Indian reservation in my State that I have not had to stand here and plead and plead for a bill to get the right of way for a railroad or canal or something across it. They stand in the path of progress. They stand right in the highway of the growth and development of the country. When we want to get a railroad over one of those reservations we have got to come to Congress, and

the people have the inconvenience that comes from such a condition. I have already referred to a condition of affairs that exists there.

A great reservation is located at Tacoma. Fifty thousand people have built a great city there, but they can not get a railroad without the consent of Congress. The Indians are in the way. They can not use the land themselves and we can not get the restrictions removed - which, it is true, last but eight years longer - because when an effort of that kind is made we are met by the point of order. We are stopped all the time. We are completely at the mercy of the conditions that surround us, and we have no aid from Congress. Why should there be this opposition to the development of our Western country?

[Mr. ALLEN addressed the House. See Appendix.]

Mr. ALLEN. Now, Mr. Speaker, I move that the House recede from its disagreement to the Senate amendment with reference to the treaties and agree to the same; and on that I move the previous question.

The SPEAKER *pro tempore*. The gentleman from Wisconsin [Mr. LYNCH] moves that the House insist upon its disagreement and ask for a further conference; the gentleman from Mississippi moves that the House recede from its disagreement to the amendment of the Senate and agree to the same; and upon that he demands the previous question. That motion takes precedence of the motion of the gentleman from Wisconsin.

The question was taken and the previous question was ordered.

Mr. ALLEN. My motion now is to recede from the disagreement to the amendment of the Senate and agree to the Senate amendment.

The SPEAKER *pro tempore*. The question is. Shall the House recede from its disagreement to the amendment of the Senate and agree to the same?

The question was taken, and the Speaker *pro tempore* announced that the ayes seemed to have it.

Mr. MADDOX. Division, Mr. Speaker.

Mr. REED. "All up." This is what we will have to do all along the line, and you may as well practice it.

The House divided; and there were - ayes 73; noes 40.

Mr. MADDOX. No quorum.

The SPEAKER *pro tempore*. The Chair will appoint as tellers the gentleman from Georgia, Mr. MADDOX, and the gentleman from Mississippi, Mr. ALLEN.

Mr. MADDOX. I call for the yeas and nays. [After a pause.] I withdraw the demand for the yeas and nays, and insist upon the point of no quorum.

The SPEAKER *pro tempore*. The Chair will appoint as tellers the gentleman from Georgia and the gentleman from Mississippi.

Mr. PICKLER. I rise to a point of order. After the yeas and nays are demanded and refused, what right has the gentleman to make the point of no quorum?

The SPEAKER *pro tempore*. The gentleman made the point of no quorum.

Mr. PICKLER. But the yeas and nays were demanded and refused. [Cries of "Oh, no."]

The SPEAKER *pro tempore*. The yeas and nays were not refused. The chair was taking the count when the demand was withdrawn.

Mr. PICKLER. I demand the yeas and nays, Mr. Speaker. The question was taken; and the yeas and nays were ordered.

The SPEAKER *pro tempore*. The Chair will appoint as tellers the gentleman from Georgia [Mr. MADDOX] and the gentleman from Mississippi [Mr. ALLEN].

Mr. MADDOX. Pending that motion, I move that the House adjourn.

The motion was agreed to.

And accordingly (at 4 o'clock and 55 minutes p.m.) the House adjourned.

ANNUAL REPORT
OF THE
COMMISSIONER OF INDIAN AFFAIRS.

1894.

REPORT
OF THE
COMMISSIONER OF INDIAN AFFAIRS.
DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, September 14, 1894.

(page 26)

* * *

AGREEMENTS WITH INDIANS.

Siletz, Yankton, and Nez Perces. - The agreement concluded with the Siletz Indians in Oregon, October 1, 1892, that with the Yankton Sioux in South Dakota, concluded December 31, 1892, and that with the Nez Perces in Idaho, concluded May 1, 1893, referred to in my last annual report, were ratified by the act of Congress approved August 15, 1894 - the Indian appropriation act. Under these agreements some 880,000 acres of land will be restored to the public domain for disposition as provided in said act.

* * *

Department of the Interior
Office of Indian Affairs
Washington, March 29, 1895

The Honorable
The Secretary of the Interior.

Sir:

I have the honor to repeat the following telegrams, dated March 25th and March 28th (instant) from the Agent at the Yankton Agency, South Dakota, for your information in connection with the proposed opening to settlement of the ceded lands of the Yankton reservation:

"Yankton Agency, 25,

Commr. Indian Affairs, Washington, D.C.

The State of South Dakota is taking steps to appropriate a large portion of the unallotted land of this reservation for school purposes on violation of agreement between the government and Indians. The Indians protest against this action and I concur.

Smith, Agent".

"Yankton Agency, S.D., March 28,

Via Armour, S.D., 28,

Commr. Indian Affairs, Washington, D.C.

Large number of settlers have squatted on reservation. Have ordered them off but cannot enforce order.

J.A. Smith, Agent".

Very Respectfully,
 Your obedient servant,
 T.P. Smith,
 Acting Commissioner.

PRESIDENTIAL PROCLAMATION
 (page 985)
 YANKTON SIOUX LANDS. May 16, 1895.

No. 1.

BY THE PRESIDENT OF THE
 UNITED STATES OF AMERICA:

A PROCLAMATION.

Whereas, pursuant to section one, of the Act of Congress, approved July thirteenth, eighteen hundred and ninety-two, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-three, and for other purposes", certain articles of agreement were made and concluded at the Yankton Indian Agency, South Dakota, on the thirty-first day of December, eighteen hundred and ninety-two, by and between the United States of America and the Yankton tribe of Sioux or Dacotah Indians upon the Yankton reservation, whereby the said Yankton tribe of Sioux or Dacotah Indians for the consideration therein mentioned, ceded, sold, relinquished, and conveyed to the United States, all their claim, right, title and interest in and to all the unallotted lands within the limits of the reservation set apart to said tribe by the first article of the treaty of April nineteenth, eighteen hundred and fifty-eight, between said tribe and the United States: and

Whereas, it is further stipulated and agreed by article eight that such part of the surplus lands by said agreement ceded and sold to the United States as may be

occupied by the United States for agency, schools and other purposes, shall be reserved from sale to settlers until they are no longer required for such purposes, but all of the other lands so ceded and sold shall, immediately after the ratification of the agreement by Congress, be offered for sale through the proper land office, to be disposed of under the existing land laws of the United States, to actual and bona fide settlers only; and

Whereas, it is also stipulated and agreed by article ten that any religious society, or other organization, shall have the right for two years from the date of the ratification of the said agreement, within which to purchase the lands occupied by it under proper authority for religious or educational work among the Indians, at a valuation fixed by the Secretary of the Interior, which shall not be less than the average price paid to the Indians for the surplus lands; and

Whereas, it is provided in the act of Congress accepting, ratifying and confirming the said agreement approved August 15, 1894, section 12 (Pamphlet Statutes 53d Congress, 2d session, pages 314 to 319),

That the lands by said agreement ceded, to the United States shall, upon proclamation by the President, be opened to settlement, and shall be subject to disposal only under the homestead and town-site laws of the United States, excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common school purposes and be subject to the laws of the State of South Dakota: *Provided*, That each settler on said lands shall, in addition to the fees provided by law, pay to the United States for the land so taken by him the

sum of three dollars and seventy-five cents per acre, of which sum he shall pay fifty cents at the time of making his original entry and the balance before making final proof and receiving a certificate of final entry; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid.

That the Secretary of the Interior, upon proper plats and description being furnished, is hereby authorized to issue patents to Charles Picotte and Felix Brunot, and W.T. Selwyn, United States interpreters, for not to exceed one acre of land each, so as to embrace their houses near the agency buildings upon said reservation, but not to embrace any buildings owned by the government, upon the payment by each of said persons of the sum of three dollars and seventy-five cents.

That every person who shall sell or give away any intoxicating liquors or other intoxicants upon any of the lands by said agreement ceded, or upon any of the lands

(page 986)

included in the Yankton Sioux Indian Reservation as created by the treaty of April nineteenth, eighteen hundred and fifty-eight, shall be punishable by imprisonment for not more than two years and by a fine of not more than three hundred dollars.

and:

Whereas, all the terms, conditions and considerations required by said agreement made with said tribes of Indians and by the laws relating thereto, precedent to opening said lands to settlement, have been, as I hereby declare, complied with:

Now, therefore, I, Grover Cleveland, President of the United States, by virtue of the power in me vested by the Statutes hereinbefore mentioned, do hereby declare and make known that all of the lands acquired from the Yankton tribe of Sioux or Dacotah Indians by the said agreement, saving and excepting the lands reserved in pursuance of the provisions of said agreement and the act of Congress ratifying the same, will, at and after the hour of twelve o'clock, noon (central standard time), on the twenty first day of May, 1895 and not before, be open to settlement, under the terms of and subject to all the conditions, limitations, reservations, and restrictions contained in said agreement, the statutes hereinbefore specified and the laws of the United States applicable thereto.

The lands to be so opened to settlement are for greater convenience, particularly described in the accompanying schedule, entitled "Schedule of Lands within the Yankton Reservation, South Dakota, to be opened to settlement by Proclamation of the President", and which schedule is made a part hereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 16th day of May, in the year of our Lord, one thousand eight hundred and ninety-five, and of the Independence of the United States, the one hundred and nineteenth.

[SEAL.]

GROVER CLEVELAND

By the President,
Edwin F. Uhl
Acting Secretary of State.

* * *

EXH 638

STATE OF SOUTH)	IN CIRCUIT COURT
DAKOTA) ss.	
COUNTY OF Charles Mix)	First Judicial Circuit
)	
THE STATE OF SOUTH)	
DAKOTA,)	INFORMATION FOR
)	Rape
vs.)	
)	
Andrew War)	

D.L.P. Lamb, State's Attorney of the County of Charles Mix, State of South Dakota, in the First Judicial Circuit, duly and legally elected, qualified and acting according to law in the name of and by the authority of the State of South Dakota, upon his oath informs the Court: That Andrew War, late of said County, yoeman, [sic] on the Twenty First day of September in the year of our Lord One Thousand Eight Hundred and Ninety Five at the County of Charles Mix and State of South Dakota aforesaid, with force and arms, in and upon one Susan Bean, a female over the age of sixteen years, who was not then and there the wife of the said Andrew War, violently and feloniously did make an assault, and [sic] her, the said Susan Bean, then and there, to-wit, on the day and year last aforesaid, feloniously did ravish and carnally know, and accomplish with her an act of sexual intercourse, by force, violence, and against her will and resistance, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of South Dakota.

/s/ D.L.P. Lamb
 State's Attorney Charles Mix
 County, South Dakota.

(Filing stamp omitted in printing)

EXH 611

HOUSE OF REPRESENTATIVES

54TH CONGRESS,) (REPORT
1st Session.) (No. 100.

HOMESTEAD SETTLERS UPON YANKTON INDIAN
RESERVATION, S. DAK.

JANUARY 21, 1896. - Referred to the House Calendar
and ordered to be printed.

Mr. DOWNING, from the Committee on the Public
Lands, submitted the following

REPORT:

[To accompany H.R. 2642.]

The Committee on the Public Lands, to whom was
referred the bill (H.R. 2642) granting leave of absence for
one year to homestead settlers upon the Yankton Indian
Reservation in the State of South Dakota, have had the
same under consideration and report it back with the
recommendation that it pass with the following amend-
ments:

Strike out the preamble.

Add the following proviso to the first section:

Provided, That the settler shall not receive credit
upon the period of actual residence required by
law for the time he is absent hereunder.

The necessity for this legislation is clearly stated in
the annexed communications from the Interior Depart-
ment.

DEPARTMENT OF THE INTERIOR,

Washington, January 18, 1896.

SIR: I have the honor to hand you herewith a copy
of a report from the Commissioner of the General Land
Office, dated the 14th instant, on H.R. bill 2642, entitled
"A bill granting leave of absence for one year to home-
stead settlers upon the Yankton Indian Reservation in the
State of South Dakota," which was referred to the Depart-
ment by your letter of the 9th instant.

The Commissioner recommends the passage of the
bill with the amendment suggested by him. His letter, in
my judgment, clearly sets forth the justice and necessity
of the proposed legislation, and I concur in his recom-
mendation that the bill, with the amendment suggested,
be passed.

Very respectfully, HOKE SMITH, *Secretary.*

Hon. JOHN F. LACEY,
*Chairman Committee on the Public Lands,
House of Representatives.*

DEPARTMENT OF THE INTERIOR, GENERAL
LAND OFFICE,

Washington, D.C., January 14, 1896.

SIR: I have had the honor to receive, by reference
from the Department, under date of January 10, 1896, for
report in duplicate and return of papers, H.R. bill No.
2642, "Granting leave of absence for one year to home-
stead settlers upon the Yankton Indian Reservation, in the
State of South Dakota," which was referred to the Depart-
ment January 9, 1896, by Hon. John F. Lacey, chairman of

the Committee on the Public Lands of the House of Representatives, in order that you may make any suggestions which you deem desirable in regard to the same for the assistance of the committee in its consideration of the bill.

After a recital of the fact that owing to the late date when the lands in the Yankton Reservation were opened to settlement the settlers were unable to plant and mature crops in the year 1895, and therefore will be compelled to temporarily leave the lands for the purpose of earning a living, the bill provides:

"That all settlers who made settlement under the homestead laws upon lands in the Yankton Indian Reservation in the State of South Dakota during the year eighteen hundred and nine-five are hereby granted leave of absence from such homestead for one year from and after the date of this act, and that by such absence such homestead settler shall not lose nor forfeit any right whatever.

"SEC. 2. That any such homestead settler may avail himself of the benefits of this act by filing a notice with the local land office describing his land and date of settlement thereon, which notice shall be signed by the settler and attested by the register of the land office.

In reply I have the honor to report that the lands in the former Yankton Indian Reservation, in the State of South Dakota, were opened to settlement and entry on May 21, 1895, by the President's proclamation of May 16, 1895.

It is evident that this date was too late in the season for settlers to plant a crop with any expectation of reaping a harvest that would afford a support for the coming year. Section 3 of the act of March 2, 1889 (25 Stat. L., 854), makes provision for leaves of absence where homestead settlers are unable to obtain a support upon the land settled upon, by reason of a failure of crops, sickness, or other unavoidable casualty. Many of the settlers on the Yankton lands will not be able to receive the benefits of said law for the reason that, having planted no crops owing to the lateness of the season, they are unable to show a failure of crops.

Yet if, under the circumstance, they are unable to support themselves and their families on the land settled upon, it seems advisable to permit them to seek elsewhere for a support without any risk of forfeiting their homesteads on a charge of abandonment.

It is provided, however, in the act of March 2, 1889, that settlers who are granted leaves of absence shall not receive credit on the period of residence required for the time absent. This appears to be a reasonable provision, and, in my opinion, should be incorporated in the bill under consideration.

I respectfully recommend, therefore, that the bill be amended by adding after the word "whatever," in the ninth line of the first section, the words: "*Provided, That the settler shall not receive credit upon the period of actual residence required by law for the time he is absent hereunder.*"

With such amendment, I see no objection to the bill which, with accompanying letter, is herewith returned.

Very respectfully, S.W. LAMOREUX, *Commissioner*.
The SECRETARY OF THE INTERIOR.

29 Stat. 16 (1896)

An Act Granting leave of absence for one year to homestead settlers upon the Yankton Indian Reservation, in the State of South Dakota, and for the other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all settlers who made settlement under the homestead laws upon lands in the Yankton Indian Reservation, in the State of South Dakota, during the year eighteen hundred and ninety-five are hereby granted leave of absence from such homestead for one year from and after the date of this Act, and that by such absence such homestead settler shall not lose nor forfeit any right whatever: Provided, That the settler shall not receive credit upon the period of actual residence required by law for the time he is absent hereunder.

SEC. 2. That any such homestead settler may avail himself of the benefits of this Act by filing a notice with the local land office describing his land and date of settlement thereon, which notice shall be signed by the settler and attested by the register of the land office.

SEC. 3. That the time for making final proof and payment for all lands located under the homestead laws of the United States of upon any lands of any former Indian reservation in the State of South Dakota, be, and the same is hereby, extended for the period of one year from the time proof and payment would become due under existing laws.

Approved, February 26, 1896.

Twelfth Census of the United States

CENSUS BULLETIN.

No. 47 WASHINGTON, D.C. February 1, 1901
(page 2)

TABLE 2. - POPULATION OF SOUTH DAKOTA
BY COUNTIES: 1870 TO 1900.

COUNTIES.	1900	1890	1880	1870	1860

Charles Mix	8,498	4,178	407	152	

Cheyenne River Indian reserva- tion. ³⁶	2,357				
Fort Sisseton ³⁷			134		
Pine Ridge Indian reservation. ³⁸	6,827				
Rosebud Indian reservation. ³⁹	5,201				

³⁶ Located in Dewey and Stanley counties, but division by counties can not be made.

³⁷ Abandoned in 1888.

³⁸ Located in Lugenbeel, Shannon, Washabaugh, and Washington counties, but division by counties can not be made.

³⁹ Located in Gregory, Lugenbeel, Lyman, Meyer, Tripp, and Washabaugh counties, but division by counties can not be made.

Sisseton and
Wahpeton Indian
reservation.⁴⁰

73

Standing Rock 1,658
Indian reservation
(part of).⁴¹

Unorganized territory

42899

⁴⁰ Parts annexed to Richland county, North Dakota, and Codington, Day, and Grant counties, South Dakota; and parts taken to form part of Sargent county, North Dakota, and parts of Marshall and Roberts counties, South Dakota, between 1880 and 1890.

⁴¹ Located in Boreman, Dewey, and Schnasse counties, but division by counties can not be made. For population of remainder of reservation see figures for North Dakota.

⁴² Of the population of the unorganized territory in Dakota in 1870 (2,091), 899 persons are estimated to have been within the present limits of South Dakota.

EXH 29

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

Washington, D.C., November 28, 1903

Hon. E.A. Hitchcock,
Secretary of the Interior, Washington, D.C.

Sir: -

I have the honor to state that in obedience to instructions of September 10, 1903, I made a careful and thorough examination of the sales of inherited Indian lands at the Yankton Agency, South Dakota, and respectfully submit the following report: -

Location and General Character of the Reservation.

The Yankton reservation is in Charles Dix [sic] County on the Southern border of the State of South Dakota. It is situated on the East bank of the Missouri river, having a river frontage of about 33 miles, and extending back from the river something like 20 miles. Besides the Missouri river, the reservation has several small creeks and Lake Andes, quite a large body of water, now supplied by two artesian wells constructed by the Government. Three years ago a line of the Chicago, Milwaukee and St. Paul Railway was built through the center of the reservation East to West . . . After allotting [sic] all the members of this tribe from their tribal lands, the remainder was bought by the Government and has been taken as homesteads by white settlers.

EXH 630

HISTORICAL ATLAS
OF
SOUTH DAKOTA
CONTAINING
STATE AND COUNTY MAPS, GEOLOGIC MAPS,
STATISTICAL CHARTS,

Geography, Geology, History.
DESCRIPTIVE NOTES, TABLES, ETC.
ILLUSTRATED.

COMPILED BY
E. FRANK PETERSON
3432 43rd St.
Sacramento, Calif.

1904

(page 128)

* * * *

CHARLES MIX COUNTY.

Population 8,498

Area 1,123 square miles.

Charles Mix county has an extreme length of over 75 miles and a Missouri river shore line of about 90 miles. The Missouri river falls from 1,280 feet at the northwest corner to 1,220 feet at Choteau creek, while the high ridge, near that stream are about 600 feet higher.

* * * *

The east half of the county formerly formed the Yankton Indian Reservation. More than three-fourths of this portion is land that has been allotted to the Indians.

About 20 per cent of the original allottees are now dead, and their allotments are being sold by the heirs. The Indians numbered 1,703 in 1902. They are generally self supporting, and most families farm at least a few acres. Some of them have large herds of cattle. Their number includes a large proportion of mixed bloods, many of whom can be distinguished from the whites only by their dark hair and eyes. They have quite generally taken on the habits and customs of the white race, and live as do their neighbors. An Indian agency and a government Indian school are maintained at Greenwood.

(page 129)

* * * *

The present population of the incorporated towns is approximately as follows: Platte 700, Geddes 800, Wagner 400.

* * * *

REPORT OF THE
COMMISSIONER OF INDIAN
AFFAIRS
TO THE SECRETARY OF THE INTERIOR
1907

(page 32)

REPORTS CONCERNING INDIANS
IN SOUTH DAKOTA.

* * * *

I think it is safe to say that there are 100 or more Yankton pupils in the public schools of this county, sixteen of which schools are located on what was the original Yankton reservation. These schools are built every year as white settlers come on the reservation and settle on lands purchased by them through the sale of Indian allotments. In a short time there will be sufficient of these district schools located at convenient points on the reservation to accommodate all the Indian pupils and it is with this end in view that the Government contemplates the abandonment of the agency boarding school.

* * * *

(page 33)

The Court of Indian Offenses has been in session regularly and has discharged its duties honestly and impartially. It disposes of many offenses and petty complaints and relieves the agent of much annoyance thereby.

It also hears and determines the more serious cases at times * * * * .

* * * *

EXH 664

Land-
Population.
I H C

Answers to Yankton Indians.

May 13 1910

William Bean, et al,
Yankton Indians,
Washington, D.C.

My Friends:

The following answers are presented to certain oral statements submitted to the Office by you:

1. Regarding the question as to who owns the land on which the Yankton Agency buildings stand - the Government or the Indians - you are advised that by article 1 of the agreement of December 31, 1892, ratified and confirmed by the Act of August 15, 1894 (28 Stat. L., 314), the Yankton Indians ceded and relinquished to the United States all their right, title and interest in and to all the unallotted lands of their reservation, and the land on which the Agency buildings stand, therefore, belongs to the Government, in accordance with the provisions of said agreement.

2. Who owns the land covered by fictitious allotments - the Yankton Indians or the Government? Those fictitious allotments have never been sold to the Government, and the Indians still claim them.

The agreement with the Yankton Sioux Tribe of Indians of South Dakota, of December 31, 1892, supra, provided in part as follows:

Article 1. The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish and convey to the United States all their claim, right, title and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as aforesaid.

Article 2. In consideration for the lands ceded, sold, relinquished and conveyed to the United States as aforesaid, the United States stipulates and agrees to pay to the said Yankton tribe of Sioux Indians the sum of \$600,000, as hereinbefore provided for.

From the foregoing it will be seen that all the right, title and interest the Yankton Indians had, as a tribe, in and to the unallotted lands within their former reservation was ceded and conveyed to the United States.

* * * *

Very respectfully,

(Signed) R.G. Valentine
Commissioner

5-RES-12
10149

EXH 22

OFFICE OF INDIAN AFFAIRS
RECEIVED OCT 7 1913
119019-14-13
Yankton 310

5-374

INSPECTION REPORT

Report of ALBERT H. KNEALE
Agency or school YANKTON, S.D.
Date of report SEPT 3-19, 1913
Section 14 Subject
16 SECS.

LAND SALES

Action should be taken or memorandum prepared on each of the following matters referred to in the report:

Noted no action necessary Ess 10-23-13

It is mere repetition when I state that these Indians were originally allotted over 200,000 acres of land and that to-day they possess less than one-third of their original holdings; however I am glad to repeat it for I feel that it is something that should be impressed upon the minds of every person that has anything to do with the administration of their affairs. Two thirds of their heritage has already passed into the hands of the Whites. They possess to-day just about one-half the land they held 10 years ago. What will the next 10 years bring forth? Will we have fulfilled our obligations to these people, moral and civic, when we have permitted them to divest themselves of the last remnant of the American Continent? These are pertinent questions. 1800 of them to-day hold about

70,000 acres of land, an average of about 160 acres per family.

* * * *

Respectfully,
/s/ Albert H. Kneale
Supervisor.

Yankton Indian School, S.D.
Report Inspection, Albert H.
Kneale, Supervisor. September
3-19, 1913.

YANKTON AGENCY
SERIAL ONE

HEARINGS
BEFORE THE
JOINT COMMISSION OF THE
CONGRESS OF THE UNITED STATES
SIXTY-THIRD CONGRESS
SECOND SESSION
TO
INVESTIGATE INDIAN AFFAIRS

JANUARY 31 AND MARCH 9, 1914

PART 5

(page 456)

THE CHAIRMAN. What is the general character of the lands that are still Indian lands on the reservation?

MR. LEECH. [SUPERINTENDENT, YANKTON SIOUX INDIAN AGENCY] Senator, let me just make an explanation. There are 268,000 which were allotted to our Indians, and the remainder of the 400,000 acres, which comprised the original Yankton Reservation, was opened for homestead; and of that 268,000 acres, of the 400,000, which were allotted, it has all been sold until they have about 98,000 acres now.

SENATOR LANE. How long has that process been going on?

MR. LEECH. It has been going on about 10 or 12 years, ever since they have been settling the land.

THE CHAIRMAN. Has the allotment work on that reservation been completed?

MR. LEECH. Yes, sir; practically so.

THE CHAIRMAN. All the Indians have been allotted?

MR. LEECH. Allotments all closed June 18, 1892, since which time no allotments have been made.

(page 485)

YANKTON SIOUX AGENCY.

Mr. Leech.

It does not make so much difference in a place like ours, because we only have a mile square there that is really a Government reservation. It would make a whole lot of difference on a place like Rosebud or Pine Ridge or large reservations not open for settlement, where all the business done on that entire scope of territory would be done under a license. All the towns where four-fifths of the merchandise is sold to our Indians, all the business houses there are conducted without a license. No one has a license except those who do business just on that agency reserve, in what we call the mile square, where the agency is located.

(page 487)

REPRESENTATIVE CARTER. How large did you say the reservation was?

MR. LEECH. About 20 by 35 or 36 miles.

(page 507)

Letter of J.F. Estes

9. The Yankton Sioux Indians have been citizens for many years, exercising the right of franchise, holding office, and being subject to the civil and criminal laws of the State. They have been prosecuted and punished and imprisoned under the judicial authority of the State.

EXH 665

(Excerpt from letter to Hon. Homer P. Snyder, Chairman,
Committee on Indian Affairs,
House of Representatives, from Secretary,
Department of Interior,
FEB-1 1921 copy initialed for file.)

My dear Mr. Snyder:

This will refer to your letter of January 24, 1920, transmitting, for report and recommendation, a copy of H.R. 15679, providing for the construction of a spillway and drainage-ditch to lower and maintain the level of Lake Andes, South Dakota.

Lake Andes is within the former Yankton-Sioux Indian Reservation.

* * * *

EXH 667

AUG 20 1930

Mr. Joseph V. King,
Clerk in Charge,
Yankton Agency.

Dear Mr. King:

We have your letter of August 13, 1930, transmitting resolution from the Commissioners of Charles Mix County, South Dakota, requesting that the copy of field notes of the Yankton Sioux Reservation on file in your office be transferred to the Register of Deeds of the county mentioned.

You report that the County Surveyor consults this record very frequently, and that the field notes are of no direct value to the agency, as matters pertaining to the survey are handled through the County Surveyor. For these reasons you recommend that the field notes be transferred to the office of the Register of Deeds for safekeeping and for joint use by the agency and the county authorities.

The originals of the field notes are on file in the General Land Office and are available for examination or copy as demand may require. The copy in your office would no doubt be more accessible to persons other than those of the agency, and probably receive better care, if made a part of the county records. It is realized that considerable of the land heretofore constituting a part of the reservation has passed out of Government control through the issuance of fee patents to allottees and purchasers, and that such land is now under the jurisdiction of the State and county authorities, which accounts for

the frequent use of the field notes by the County Surveyor.

No objection is seen to making the proposed transfer, with the understanding that the employees of the Yankton Agency shall have the privilege of consulting the record at will, and you are hereby authorized to proceed accordingly.

Sincerely yours,

C.J. Rhoads
Commissioner

Approved: SEP -2 1930
John H. Edwards
Assistant Secretary.

CONSTITUTION AND BYLAWS OF THE YANKTON SIOUX TRIBAL BUSINESS AND CLAIMS COMMITTEE

Article 1. This organization shall be known as THE YANKTON-SIOUX TRIBAL BUSINESS AND CLAIMS COMMITTEE, hereinafter called The Tribal Committee for the sake of brevity.

Article 2. The members of the Tribal Committee shall be elected to act for the Tribe only in an advisory and signatory capacity, and the power of rendering decisions for the tribe shall not be conferred upon them until after the views and sentiment of the tribe have been thoroughly established and determined; excepting, in minor cases not affecting Article 14 where questions of Departmental policy are involved, they shall have freedom and liberty, without consulting the Tribe, to act and pass upon such matters of a minor character as may be presented to them by the superintendent or the Commissioner of Indian Affairs.

The views of the Tribe having been determined, the Tribal Committee shall be elected with authority to act in any and all tribal matters, including tribal claims of every nature.

Regardless of their personal opinions, it shall be the express and explicit duty of the Tribal Committee to carry out the wishes of the majority of the Tribe in all cases; with the sole object of promoting the social, financial, industrial, and general welfare of the Tribe; and to make such recommendations to the Executive, Judicial, and Legislative Branches of the Government, or to any others,

as the Tribal Committee and the Tribe may deem advisable; and the Tribal Committee shall at all times diligently and wholeheartedly endeavor to co-operate with the Bureau of Indian Affairs.

Article 3. The Tribal Committee shall be composed of nine (9) enrolled members of the Yankton-Sioux Tribe, bona fide residents of Charles Mix County, South Dakota, and twenty-one years of age or over.

Under the peculiar economic conditions of the country and owing to acts of God in this particular region, it shall not be a bar to becoming a member of the Tribal Committee that any Indian residing in Charles Mix County has received charitable aid; however, their records must show that under past normal conditions of the country they were actively engaged in a gainful occupation in an effort to support themselves and their families.

Article 4. The election of members of the Tribal Committee shall be held at a general Tribal Council, as follows:

- (a) A majority of the lawful votes present shall determine all questions referred to a general Tribal Council.
- (b) A rising, or standing, vote shall govern all elections, unless otherwise ordered by vote of the Tribal Council.
- (c) In electing members of the Tribal Committee, at least nine nominations shall be made; and after the Tribal Council has made all the nominations it may desire, the nine receiving the highest number of votes

shall be declared elected. In case of a tie, the Chairman shall have power to decide.

Article 5. The Indian Office shall instruct the Superintendent, or anyone else with proper authority, to make provisions for each election.

Notice of election stating the place and hour of voting shall be posted not less than two weeks in advance.

The Commissioner of Indian Affairs and all subordinate officers shall take extra precautions to insure a fair election.

Article 6. The first election of members of this Tribal Committee shall be held immediately upon adoption of this Constitution and By-Laws.

Thereafter, elections shall be held every two years in the month of September, the date to be designated by the Commissioner of Indian Affairs, at which time nine (9) committee members shall be elected according to the provisions of this Constitution, whose terms of office shall be for a period of two (2) years.

Article 7. Regular meetings of the Tribal Committee shall be held on the first Monday of the months of April, July, and October, at the Agency Headquarters.

Special meetings may be called by the Commissioner of Indian Affairs, either on his own motion or upon the written request of five (5) or more members of the Tribal Committee, such calls and requests to state the purpose of the meeting.

Article 8. If a vacancy occurs in the position of Committeeman, it shall remain discretionary with the Tribe to

fill out the unexpired term of such vacancy, or vacancies, at a special or general Tribal Council.

Article 9. Before assuming their places on the Tribal Committee, members elect shall subscribe to the following oath or affirmation of office:

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, and faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the Bureau of Indian Affairs in all proper efforts to promote and protect the best interests of the Indians of the Yankton Reservation, and to assist them in every way toward better citizenship and progress.

Article 10. At the first meeting following election the Tribal Committee shall elect a Chairman, Vice-Chairman, Secretary, Treasurer, or any other officers it may require to transact their business.

A majority of the members of the Tribal Committee shall constitute a quorum for the transaction of business.

Article 11. Any official or employee of the Bureau of Indian Affairs, or anyone else who may have business with the Tribal Committee sufficient to warrant his presence, may attend the meetings of the Tribal Committee to confer and advise with them on matters affecting the Tribe.

Article 12. The Secretary of the Tribal Committee shall keep the minutes of all regular and special meetings, and include therein all business transacted by the Tribal Committee.

He shall file one official copy of the minutes at the Agency Headquarters; and one copy shall be forwarded to the Commissioner of Indian Affairs.

Article 13. Any member of the Tribal Committee shall be subject to recall from office for reasonable cause upon investigation by the Commissioner of Indian Affairs or his representative.

The Tribe also shall have the right, by petition of over fifty (50) per cent of the adult resident members, to demand the removal of any committeeman for cause. The Commissioner of Indian Affairs shall act thereon in his discretion.

Article 14. Matters of great importance to the Tribe which the Commissioner of Indian Affairs or the Tribal Committee believes should be referred to a general Tribal Council shall be so referred.

Or, a Tribal Council shall be called upon petition to the Commissioner of Indian Affairs signed by not less than ten (10%) per cent of the adult members of the Yankton-Sioux Tribe resident in Charles Mix County, S.D.

Article 15. The office of Tribal Committeeman shall be strictly honorary and without compensation, except when valuable and meritorious services are rendered by any member of the Tribal Committee in the discharge of his duties as committeeman, in which case claim may be made for compensation.

Before payment, any such claim must be approved by a general Tribal Council as well as the Secretary of the Interior.

Article 16. This Constitution and Bylaws may be amended at any regular or special Tribal Council, subject to the approval of the Commissioner of Indian Affairs.

Article 17. This Constitution shall be in full force and effect to govern the Yankton-Sioux Tribe and Tribal Committee on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D.C.

DEPARTMENT OF THE INTERIOR
Office of Indian Affairs

October 5, 1932.

The foregoing Constitution and By-Laws for the "Yankton-Sioux Tribal Business and Claims Committee" is hereby approved.

/s/ C.J. Rhoads,
Commissioner

**JOINT
APPENDIX**

VOL. III

AUG 7 1997

CLERK

In The
Supreme Court of the United States

October Term, 1996

STATE OF SOUTH DAKOTA,

v.

Petitioner,

YANKTON SIOUX TRIBE, a federally recognized tribe of
Indians, and its individual members; DARRELL E. DRAPEAU,
— individually, a member of the Yankton Sioux Tribe,

Respondents,

and

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT,
a nonprofit corporation,

Respondent.

On Writ Of Certiorari To The United States
Court Of Appeals For The Eighth Circuit

JOINT APPENDIX
VOLUME III, PAGES 489-725

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Petition For Certiorari Filed April 4, 1997
Certiorari Granted June 9, 1997

210 1997

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Yankton Agency
South Dakota
December 3, 1932

To The Hon, Lynn J. Frazier, Chairman,
Senate Investigating Committee,
Washington, D.C.

PETITION

We, the undersigned members of the Yankton-Sioux Tribe, respectfully petition that the Honorable Commissioner of Indian Affairs and the Honorable Secretary of the Interior reconsider and recind [sic] their approval of a certain Council held at Yankton Agency, South Dakota on the 22nd day of September, 1932, on the ground said approval was made upon incomplete and misleading information as to how the results of the Council were wrongfully obtained. In support of this request we offer the following statements of facts indicating why it should be disapproved.

* * * *

(page 6)

* * * *

The records show there were 2,000 Yanktons at that time. The rolls of today show less than 2,000. We were allotted under the General Allotment Act whereby we all became citizens of the United States and have been voting ever since. Our allotment rolls were closed in 1894. Therefore all Indians 38 years old or less got no allotments and never will get any as no land is available. Our Boarding school was closed about 20 years ago. Our

children attend public school. We have no hospital, never did. We have no tribal funds. Our rolls were closed in 1920. There were only some 20 old people drawing rations up to 1930 when Superintendent Hickman took charge.

The records show today that there are about \$50,000 Individual Indian Moneys on deposit, belonging mainly to the children of mixed-blood Indians who have been citizens for the last 40 years.

The records show the cost of administering to be about \$55,000 a year. ABOLISH YANKTON AGENCY. We believe a Sub-Station on our 80 acre Tribal land, under the Rosebud jurisdiction; and a Farmer in charge would serve our needs better. This is not a new idea. The abolishing of Yankton Agency was under consideration during former Commissioner Burke's time.

(page 7)

THERE IS NO NEED OF A TRIBAL COUNCIL here at our Mile Square Agency Reserve. We had no Tribal Council in the 75 years of our establishment and today, when our reservation is reduced to A MILE SQUARE, we do not need a Tribal Council. It would be a greater economy to sell our MILE SQUARE and the 1000 acre-hills back of it. None of it is in demand for valuable leasing or other purposes that would require our attention.

* * * *

(page 10)

* * * *

/s/ Mr. James William Solomon St. Cloud
[and approximately 275 others]

EXH 627

MARCH 1, 1934

DEPARTMENT OF THE INTERIOR

YANKTON SIOUX SCHOOL LANDS

M-27671.

March 1, 1934.

(page 390)

* * * *

DEAR MR. SECRETARY:

At the suggestion of the Assistant Commissioner of Indian Affairs my opinion has been requested as to whether certain buildings located on lands originally a part of the Yankton Sioux Indian Reservation in South Dakota belong to the Indians or to the United States.

* * * *

Nathan R. Margold
Solicitor

Approved: March 1, 1934

Oscar L. Chapman, *Assistant Secretary*

(Amended)

(EXH 652)

CONSTITUTION AND BYLAWS
OF THE
YANKTON SIOUX TRIBAL BUSINESS AND
CLAIMS COMMITTEE

PREAMBLE

Whereas the Yankton Sioux Tribe of Indians have progressed in their association with other members of the community in which they live, and many members are educated and self-supporting, and trained in business, trades, skills and farming and Whereas, the Yankton Sioux Tribe of Indians adopted a Constitution and By-Laws on September 22, 1932, which Constitution provides for amendment of the same at any regular or special Tribal Council, subject to the approval of the Commissioner of Indian Affairs and the said Constitution failing to provide for business and Tribal affairs as they exist today, and a Tribal Council having been held at Greenwood, South Dakota, on August 3-4, 1961, after due notice was given and continued thereafter until the business of that Council was completed, at which Tribal Council at its meeting having authorized a resolution whereby a Constitutional Committee was elected on December 16, 1961, to draft a Constitution and By Laws and the Committee having duly considered the matter and having discovered that the Yankton Sioux Tribe of Indians has a Constitution, which Constitution was adopted on September 22, 1932, and approved by the Commissioner of Indian Affairs on October 5, 1932, and the original Constitution and By-Laws providing in Section 16 thereof that the Constitution and By-Laws may be amended at any regular or special Tribal Council, subject

(change of typographical error in original preamble) to the approval of the Commissioner of-Indian [sic] Affairs and which Constitution is now in full force and effect, the Constitutional Committee after due consideration being of the opinion that the said Committee is without authority to draft a Constitution and By-Laws, but is authorized to the drafting of amendments and bylaws to the original said Constitution at a Tribal Council held at Greenwood, South Dakota, on July 17 (correct date May 17, 1962) and in order to establish further a united Tribal organization to conserve and develop the common resources of our Tribe, to promote and advance the health, education and welfare of our selves and our posterity, to instill through education and industrial development on our reservation, a sense of responsibility and initiative both of which are necessary in a dynamic society, to ever hold before our Tribe the glory and heritage of our race, we do hereby amend our existing Constitution and By-Laws as follows:

ARTICLE I - AMENDED CONSTITUTION

Section 1. This is an amendment of the 1932 Constitution and By-Laws, which said Constitution is in full force and effect, as provided in Articles 16 and 17 thereof:

Article 16. This Constitution and By-Laws may be amended at any regular or special Tribal Council, subject to the approval o- [sic] Commissioner of Indian Affairs.

Article 17. This Constitution shall be in full force and effect to govern the Yankton Sioux Tribe and Tribal Committee on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D. C.

Section 2. It is specifically recognized by the Constitutional Committee and the Tribe at large that this Amended Constitution is not subject to the provisions of the Howard Wheeler Act of 1934, which is the Indian Reorganization Act Public Law No. 383, of the 73rd Congress o- [sic] the United States of America S [sic] (3645).

ARTICLE II - NAME

Section 1. The Executive organization existing under this Constitution shall be known as the Yankton Sioux Tribal Business and Claims Committee wherever the word committee is used it shall mean the Yankton Sioux Tribal Business & Claims Committee, hereafter.

ARTICLE III - PURPOSE AND OBJECT

Section 1. To provide the Tribe with authority to protect their interest in the Tribal land and advise individual members of their rights, privileges and immunities as owners of allotted lands and to prosecute claims in the name of the Tribe for loss of Tribal lands to the United States of America and to retain counsel of their choice to represent the Tribe in suits for or against the Tribe regarding claims and to contract with counsel for such service.

(Pursuant to Bureau of Indian Affairs, Washington Office Letter of approval, of this Amended Constitution, dated April 24, 1963, "it should be understood that 25 USC 81 provides for the approval of all contracts by the Secretary of the Interior".

ARTICLE IV - MEMBERSHIP

(Section 1 changed in its entirety by Amendment No. I, effective June 16, 1975)

Section 1(a). The membership of the Yankton Sioux Tribe shall consist of the following:

1. All persons of Yankton Sioux Blood whose names appear or are entitled to appear on the October 6, 1972, Yankton Sioux Tribal Roll.

2. All children born to members whose names appear on the base roll of October 6, 1972, of the Yankton Sioux Tribe must possess at least one-fourth (1/4), degree Indian Blood of which one-eighth (1/8~ [sic] must be Yankton Sioux Indian Blood.

Section 1(b). The following persons shall not be eligible for [sic] with the Yankton Sioux Tribe:

1. Persons who are enrolled with another Tribe of Indians and who have shared as members in allotments of land/or [sic] payments, excluding inherited interests, from any other tribe.

2. Children of Indian Blood of other tribes and non-Indian children who have been legally adopted by members of the Tribe.

3. Persons who are not citizens of the United States.

Section 2. The membership rolls shall be reviewed annually by the Committee in order to keep records up to date as well as make any necessary corrections, said corrections subject to the approval of the Tribe.

ARTICLE V - OFFICERS

Section 1. These shall be comprised of nine members consisting of a Tribal Chairman, Vice-Chairman, Secretary, Treasurer and five other members which members and officers shall be nominated by a petition signed by not less than 25 members of the Tribe and which petition shall designate the office for which the candidate is running, either Chairman, Vice-Chairman, Secretary and Treasurer, or members at large.

(Pursuant to Bureau of Indian Affairs, Washington Office Amended Constitution approval letter dated April 24, 1963, as a matter of clarification, "it is understood that the reference to 'Secretary and Treasurer' as used in the last line o~ [sic] this section is not to be construed that the secretary and treasurer is one office").

Section 2. The officers and Committee members shall be elected every two years on the first Thursday in September to hold office until their successors are duly installed, or as may be otherwise provided. Any Committee member or officer may be removed for good cause by a two-thirds vote of the members attending any regular Tribal meeting or any meeting called for such removal.

(As stated in Bureau of Indian Affairs, Washington Office letter of approval, of this Amended Constitution, dated April 24, 1963, "circumstances may, on occasion, warrant the removal of an officer or committee member of a tribe's designated tribal committee, and that the procedures for removal need to be clearly established in order to avoid excessive disruption of the tribal organization arising from charges for removal which may be made without specific-grounds [sic]. For this reason it should

be understood that the Committee of the Yankton Sioux Tribe, by resolution or ordinance, will establish an appropriate removal procedure. As a matter of information, the removal procedure could include such factors as malfeasance in the handling of tribal affairs, neglect of duty, unexcused failure to attend three regular meetings in succession, conviction of a felony in any county, state or Federal court while serving on the Committee, and refusal to comply with any provisions of the Constitution and By-laws of the Tribe").

Section 3. The judicial power shall remain in the Tribal membership upon request of five members for any just cause, such cause shall be submitted at any regular Tribal meeting for action. The legislative branch shall be comprised of the nine Committee members, however any legislative action shall first be submitted to a General Tribal Council and subject to Tribal amendment, repeal or ratification.

(As stated in Bureau of Indian Affairs, Washington Office letter of approval, of this Amended Constitution, dated April 24, 1963, "for the purpose of clarity, it is understood that the intent of this section is to allow the tribal membership a means of control over its officers and committee members through such actions as reprimand, censure, suspension and removal, and that there is no intent on the part of the tribe to establish any type of judicial proceedings either criminal or civil. Our comments on Section 2 of Article V with respect to the establishment of written removal procedures applies to this section").

Section 4. Compensation shall not be paid to any Committee member, Chairman, Vice-Chairman, Secretary,

Treasurer, or any member of the Tribe without the approval of the Tribe and the Secretary of the Interior.

(Pursuant to Bureau of Indian Affairs, Washington Office Amended Constitution approval letter dated April 24, 1963, "With respect to the language 'approval by the Secretary of the Interior' as it appears in this section and in other parts of this constitution, your attention is directed to the administrative procedures established by law which permits the Secretary of the Interior to delegate authority to subordinate officers. Therefore, for the purpose of clarity, it should be understood that when any reference in this Constitution is made to the 'Secretary of the Interior' it shall mean the 'Secretary' or his authorized representative").

ARTICLE VI - TERRITORY

Section 1. The territory under which this Constitution shall exist shall extend to all original Tribal lands now owned by the Tribe under the Treaty of 1858.

Section 2. All assignments of Tribal land heretofore made by the Bureau of Indian Affairs, prior to this amended Constitution, shall remain at the discretion of the Bureau of Indian Affairs.

(As stated in Bureau of Indian Affairs, Washington Office Amended Constitution approval letter dated April 24, 1963, "The language in this section could have been stated in a more explicit manner. It is not known whether the assignments made prior to this amended constitution were made only with the approval of the Bureau. Assignments of tribal land are the responsibility of the tribe, but

such assignments may be made subject to approval of the Secretary or his authorized representative. Therefore, it is understood that as a matter of principle, the provision of this section is interpreted by the Bureau to include the proprietary rights of the tribe in making assignments").

Section 3. All Tribal lands, and Tribal property thereon shall remain free from taxation and shall be exempt from and [sic] all forms of liens, and shall not be encumbered in any manner whatsoever.

(As stated in Bureau of Indian Affairs, Washington Office Amended Constitution approval letter dated April 24, 1963, "The language of this section implies that the provisions therein take precedence over the laws of the United States.

To avoid any false impression it is understood that the provisions of this section are subject to any valid law to the contrary. We do not believe the tribe intended that the word 'encumbered' be used is [sic] such a broad sense as to preclude the tribe granting assignments, permits, leases, and rights of way. This interpretation is made in order to provide clarity 50 [sic] the intent of the language contained in this section").

ARTICLE VII - CLAIMS AGAINST THE UNITED STATES

(The provisions of Article VII of the Amended Constitution were disapproved by Bureau of Indian Affairs, Washington Office letter dated April 24, 1963, and therefore are omitted from this text. The article number remains only to follow numerical sequence of the Washington Office letter of April 24, 1963).

ARTICLE VIII - HEADQUARTERS

Section 1. This organization shall have temporary headquarters at Yankton Sub-Agency, Wagner, South Dakota. This organization shall be at all times non-sectarian.

ARTICLE IX - DEMOCRATIC FORM OF GOVERNMENT

Section 1. All operations under this Constitution shall be free from. [sic] any system of collectives and/or socialism under any and 211 [sic] circumstances.

Section 2. This Constitution shall stress to the fullest extent of its authority at all times, recognition of and operation under the private enterprise system and democratic way of life.

ARTICLE X - HUNTING

Section 1. Hunting or fishing of wild game shall not be forbidden any Indian on Tribal lands.

(Pursuant to Bureau of Indian Affairs, [sic] Washington Office Amended Constitution approval letter dated April 24, 1963, "the provisions of this section as simply a statement of tribal policy that the tribe will not prohibit or otherwise attempt to keep Indians, whether tribal members or not, from carrying on hunting activities on tribal lands. And that it is not intended as an affirmative grant of right. It should be further understood that any such activity by Indians will be subject to applicable laws on the subject").

Section 2. Hunting or fishing shall be allowed on allotted or heirship land with permission of the land owner or owners.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution approval letter dated April 24, 1963, "From the standpoint of clarification and understanding we regard the provisions of this section as simply a statement of tribal policy that hunting and fishing activities by anyone, whether Indian or non-Indian, on allotted or individually owned land, will be a matter for determination by the individual owners and it is not intended as a grant of an affirmative right. As indicated above, such activities will be subject to applicable laws").

ARTICLE XI - AMENDMENTS

Section 1. An amendment to this Constitution may be proposed at any regular or special Tribal meeting by vote of majority of the members present at such meeting in favor of any proposed amendment. To officially adopt such proposed amendments there must be an election as to which there shall be written notices posted at proper places throughout the reservation at least thirty (10) [sic] days and not more than sixty (60) days in advance of the date of such amendment is to be considered, such notices to give the time and place of the meeting and also to specify what the pro posed [sic] amendment is.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution approval letter dated April 24, 1963, (it [sic] should be understood that the tribe will enact an ordinance governing the conduct of elections on

amendments. Such an ordinance shall provide all information pertinent to an election including voting on amendments by absentee ballots).

Section 2. All or any part of this Constitution is subject to amendment repeal or ratification subject to the approval of the Secretary of the Interior.

(Former Section 2 and Section 3 were deleted and Section 4 renumbered as Section 2 pursuant to Bureau of Indian Affairs, Washington Office Amended Constitution approval letter dated April 24, 1963.)

- ARTICLE XII - LAW AND ORDER

(This is a new article added by Amendment No. II, effective June 16, 1975)

Section 1. To promulgate and enforce ordinances governing the conduct og [sic] members of the Yankton Sioux Tribe and providing for the maintenance of law and order and the administration of justice by the establishment of a reservation court and defining its duties and powers subject to the approval of the Secretary of the Interior or his authorized representative.

AMENDED BY-LAWS OF THE YANKTON SIOUX TRIBAL BUSINESS AND CLAIMS COMMITTEE

ARTICLE I - VOTING ON INDIAN LEGISLATION

Section 1. All Tribal Business other than of a routine nature which would involve Indian Legislation shall be voted on by secret ballot at a polling place, time and

place of such voting to be determined and designated by the Committee. Notice shall be posted at proper places throughout the reservation at least thirty (30) days and not more than sixty (60) days in advance of such voting. (Change of typographical error in original document - the word "and" preceding the word sixty changed to "than").

Section 2. All eligible voters may vote by presenting themselves at the polling place. Approval by majority vote shall be considered final.

ARTICLE II - ELECTIONS

Section 1. The first election of Committee members under this Constitution shall take place thirty (30) days after its approval by the Tribe and the Secretary of the Interior. Thereafter elections shall be held every two years on the first Thursday in September. Voting shall be by secret ballot cast at a polling place to be designated by an election board to be appointed by the Committee. The said election board shall have power to certify the election of any candidate elected in accordance with Tribal membership rights.

Section 2. All eligible members of the Yankton Sioux Tribe eighteen (18) years of age or older shall be eligible to vote in all tribal elections. (As changed by Amendment No. III, effective June 16, 1975)

Section 3. All elections shall be governed by Section 1 of Article III and ordinances establishing election rules and regulations promulgated by the Yankton Sioux Business

and Claims Committee subject to approval by the Yankton Sioux General Council. (This is a new section added by Amendment No. IV, effective June 16, 1975)

ARTICLE III - MEETINGS

Section 1. In addition to an annual meeting (3rd Tues. in Aug. of each year) regular Tribal meetings shall be called by the officers when the need arises or upon the request of [sic] ten members, and thirty (30) days notice designating the time and place may be posted throughout the reservation and must include the agenda.

Section 2. In the event of an emergency situation, or upon the request of fifteen members, the officers shall have authority to call a special meeting. Notice of such meeting shall be by best possible methods of communication available and can be by [sic] word of mouth and television news broadcasts and etc.

Section 3. A majority of the members of the Tribal Committee shall constitute a quorum at Committee meetings and twenty members shall constitute a quorum at general meetings.

ARTICLE IV - MANAGEMENT

Section 1. The Committee shall have the authority to investigate and transact all Tribal business of a routine nature and Indian legislation including Industry, Sanitation, Housing Redevelopment and etc., and shall also act in the capacity of a liaison delegation between the Tribe and Federal, State and local governments, and such other agencies or parties that may offer opportunities for the

Tribe. It will be required of the Committee to keep the members of the Tribe clearly informed during the process of investigation. Indian legislation will be brought to the general Tribal council for the Tribe's consideration, 30 days prior to referendum vote by the Tribe.

Section 2. The Committee shall negotiate the terms of contractual agreements, said contractual agreements shall be subject to the approval of the Tribe. Approval to be made in accordance with Article I, Sections 1 and 2 of the amended By-laws.

(The spelling of the word "contractual" is corrected in the above section as provided in Bureau of Indian Affairs, Washington Office approval letter of the Amended Constitution and By-laws dated April 24, 1963.)

Section 3. All allotted lands, including heirship lands, belonging to any member of the Yankton Sioux Tribe of Indians shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be inherited by the legal heirs of the present owners, whether such heirs are members of the Yankton Sioux Tribe of Indians or not. It is also recognized that under existing law the Secretary of Interior may remove restrictions upon such lands, upon the application of the Indian owner, whereupon the land may be sold or mortgaged and in such event, will be subject to taxes. The rights of the individual Indians to hold their lands under existing law shall not be affected by anything contained in this Constitution and By-Laws.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "it should be understood that lands

belonging to any member of the Yankton Sioux Tribe, whether allotted or heirship lands, and whether in trust or non-trust status, are governed by the laws of the United States").

Section 4. It is recommended by the Yankton Sioux Tribe that a majority of heirs or as many that may be available (51% or more) should constitute a lease. Every effort shall be made by the renter in order to obtain as many signatures as possible. This is in recognition of the democratic way of life, where a majority of individual Indians should have freedom in exercising their rights in negotiating a lease. In the process of negotiating a lease all heirs shall be notified thereby individual rights will not be violated.

(As stated in Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "Exception is not taken to the provisions of Section 4 of Article IV of the Bylaws, but it should be understood that the statute, 25 USC 380, as implemented by 25 CFR 131, will govern the execution of leases on inherited lands").

Section 5. Any business in the matter of Tribal claims shall be brought directly to a General Tribal Council for the Tribe's consideration, except in case of an emergency involving any attorney contract, then the contract shall be executed in accordance with the format used in the renewal dated February 1, 1957. This format was used again by the Constitutional Committee in an emergency involving attorney contract which expired in January 17, 1961 and in view of circumstances as stated in the letter of January 17, 1962 from the law office of Wilkinson, Cragun, and Barker, the Committee temporarily extended

the original attorney contract so that the Yankton Claims will not be lost by default.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "it should be understood by the Tribe that when authority is not delegated to its representative body tribal council, committee, etc., to employ legal counsel, such authority rests with the Tribe. Approval of a contract for legal services, therefore, must be by resolution by the tribe in general council. Such resolution should designate the tribal officials authorized to execute the contract on behalf of the tribe").

Section 6. The format mentioned above is an exception to the regulations cited as 25 CFR Section 72. The specific authority as required in contractual agreement are from excerpts of Title 25 of the Code of Federal Regulations as follows: (a) Section 72.7 statutes governing the negotiation and execution of Tribal attorney contracts with Tribes not organized under the Indian Reorganization Act must be in strict accordance with the requirements of Section 2103 of the revised statutes of the United States. (25 U.S.C. 81) (b) Section 72.8 statutes governing selection of counsel, except as stated in sections 72.12-72.15, a Tribal attorney and Tribal delegates to execute a contract-shall [sic] be selected by a General Council or meeting of the Tribe, to be called by the Superintendent of the particular reservation. The Superintendent, or someone representing him shall be in attendance with a stenographer.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated

April 24, 1963, "it should be understood that our comments in connection with Section 1 of Article III of the Constitution concerning the approval of contracts likewise apply to this section").

Section 7. The rights of the individual Indians to hold their money shall not be affected by anything contained in this Constitution and By-Laws. All individually owned income such as wages, salaries, pensions, income from allotted lands and heirship and deeded lands and any other income of the individual shall be held by such individual.

(As stated in Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "it must be understood that where income is derived from trust sources and such monies are processed through the Individual Indian Money Accounts, the Individual Indian Money regulations shall govern").

Section 8. (Pursuant to Bureau of Indian Affairs, Washington Office, amended Constitution and Bylaws approval letter dated April 24, 1963, this section was disapproved and deleted from the tribal document.)

ARTICLE V – DUTIES OF OFFICERS

Section 1. Duties of Chairman: All duties normally applicable to the post of Chairman shall be required of the Chairman although he need not necessarily preside at General Council meetings. All official Tribal business shall require the signature of the executive Chairman.

(As stated in Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated

April 24, 1963, we interpret the reference to "executive chairman" to mean the Chairman of the Yankton Sioux Tribal Business and Claims Committee.)

Section 2. Duties of Vice-Chairman: The Vice-Chairman shall assume and discharge the duties of the office of Chairman in the absence or disability of, or at the request of the Chairman. The Vice-Chairman shall administer oaths of office to all members who may be elected before such elected members take active part in the deliberations of the Committee.

Section 3. Duties of the Secretary: The Secretary shall have charge of and keep an accurate record of all proceedings of the meetings, keep such records as may be required by the membership, and keep the members of the Tribe clearly informed of the various accomplishments of the Committee, and shall handle the correspondence of this organization. All official Tribal business shall require the signature of the Executive Secretary.

Section 4. Duties of Treasurer: The Treasurer shall be responsible for maintaining the bookkeeping system and preparing the annual budget, financial statements, balance sheets, and profit and loss statements. The Treasurer shall sign all vouchers and make a full report to the Tribe on the financial reports as they are available and at the annual meeting, the Treasurer shall also be bonded.

Section 5. Duties of Chaplain: The Committee shall agree on selecting a Chaplain who shall give the invocation at all meetings.

ARTICLE VI - ELIGIBILITY OF OFFICE

Section 1. Any-member [sic] of this organization in good standing over the age of 21 years shall be eligible to hold office in this organization with the provision that he or she shall be a resident of the Yankton Indian Reservation of South Dakota for at least one year. This shall specifically exclude any employee of the United States Government.

ARTICLE VII - VACANCIES

Section 1. Any and all vacancies existing other than from the expiration of the term of office shall be filled by a majority vote of the membership acting at the regularly scheduled Tribal meeting, and such appointed person shall hold office for the unexpired term of the person he succeeds and until a successor is duly elected and installed.

ARTICLE VIII - OATH OF OFFICE

Section 1. All duly elected or appointed members of the Committee shall take an oath of office prior to assuming the duties of such office, pledging himself to support and defend the Constitution of the United States of America, the Constitution of the state of South Dakota and the Constitution of the Yankton Sioux Tribal Business and Claims Committee including the Bylaws thereof. The oath shall be in form as follows:

"I, ___, do solemnly swear to defend the Constitution of the United States of America, the Constitution of the State of South Dakota, and the Constitution and By-Laws of the

Yankton Sioux Tribal Business and Claims Committee against all enemies. I will carry out, faithfully and impartially, the duties of my office to the best of my ability, and protect the best interests of the Yankton Sioux Tribe of Indians in accordance with its Constitution and By-Laws. So help me God.

ARTICLE IX - UNDUE INFLUENCE ON CONTRACTS

(The provisions of Article IX of the Amended Bylaws were disapproved by Bureau of Indian Affairs, Washington Office letter dated April 24, 1963, and therefore are omitted from this text. The article number remains only for continuity of numerical sequence.)

ARTICLE X - MEMBERSHIP FILE

Section 1. Each and every member of this organization shall furnish the Secretary with his or her address for mailing purposes.

ARTICLE XI - QUASI CORPORATION

Section 1. This organization shall be in the nature of a corporation.

Section 2. This organization shall not be perpetual, but shall depend upon the sphere of its activity.

Section 3. This Quasi Corporation shall operate without a State or Federal Charter.

ARTICLE XII - RULES OF ORDER

Section 1. All proceedings of this organization shall be conducted under and pursuant to Roberts' Rules of Order.

ARTICLE XIII - AMENDMENTS

Section 1. The procedures for amending these By-Laws shall be in accordance with ARTICLE II of the Constitution.

(Pursuant to Bureau of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "It is, however, understood that amendments to the Bylaws shall be accomplished in accordance with the provisions of Article XI of the Constitution").

(Pursuant to aerie [sic] of Indian Affairs, Washington Office, Amended Constitution and Bylaws approval letter dated April 24, 1963, "The amended constitution of the Yankton Sioux Tribe is approved as set forth herein [sic].)

CERTIFICATION OF ADOPTION

THE ATTACHED AMENDED CONSTITUTION AND BYLAWS (1962) WERE adopted AT A MEETING HELD JULY 2, 1962, at GREENWOOD, SOUTH DAKOTA, by a vote of 77 for, and 35 against, of the approximately 175 persons in attendance.

APPROVAL

I, Harley D. Zephier, Area Director of the Aberdeen Area Office, Bureau of Indian Affairs, by virtue of the authority granted to me by 10 BIAM 3.1, hereby approve the attached Amendment No. 1, which amends Section 1 of Article IV, Membership, of the Constitution of the Yankton Sioux Tribe of South Dakota.

(Sgd) Harley D. Zephier
Area Director

Date: June 16, 1975

Aberdeen Area Office
Aberdeen, South Dakota

AMENDMENT
CONSTITUTION AND BYLAWS
OF THE YANKTON SIOUX TRIBE
SOUTH DAKOTA

AMENDMENT I

Article IV. Membership. Section 1, of the Constitution shall be amended to read as follows:

Sec. 1(a) The membership of the Yankton Sioux Tribe shall consist of the following:

1. All persons of Yankton Sioux Blood whose names appear or are entitled to appear on the October 6, 1972, Yankton Sioux Tribal Roll.
2. All children born to members whose names appear on the base roll of October 6, 1972, of the Yankton Sioux Tribe must possess at least one-fourth ($\frac{1}{4}$), degree Indian Blood of which one-eighth ($\frac{1}{8}$) must be Yankton Indian Blood.

Sec. 1(b) The following persons shall not be eligible for enrollment with the Yankton Sioux Tribe.

1. Persons who are enrolled with another Tribe of Indians and who have shared as members in allotments of and/or payments, excluding inherited interests, from any other tribe.
2. Children of Indian Blood of other tribes and non-Indian children who have been legally adopted by members of the Tribe.
3. Persons who are not citizens of the United States.

DELETE SECTION 3 OF ARTICLE IV, MEMBERSHIP.

APPROVAL

I, Harley D. Zephier, Area Director of the Aberdeen Area Office, Bureau of Indian Affairs, by virtue of the authority granted to me by 10 BIAM 3.1, hereby approve the attached Amendment II, which amends the Constitution of the Yankton Sioux Tribe of South Dakota by adding an Article XII, Law and Order.

(Sgd) Harley D. Zephier
Area Director

Date: June 16, 1975

Aberdeen Area Office
Aberdeen, South Dakota

AMENDMENT
CONSTITUTION AND BYLAWS
OF THE YANKTON SIOUX TRIBE
SOUTH DAKOTA

AMENDMENT II

Add an Article XII to the Constitution to read as follows:

Article XII. Law and Order

Section 1. To promulgate and enforce ordinances governing the conduct of members of the Yankton Sioux Tribe and providing for the maintenance of law and order and the administration of justice by the establishment of a reservation court and defining its duties and powers subject to the approval of the Secretary of the Interior or his authorized representative.

AMENDMENT
CONSTITUTION AND BYLAWS
OF THE YANKTON SIOUX TRIBE
SOUTH DAKOTA

AMENDMENT III

Article II, Elections. Section 2, of the By-laws shall be amended to read as follows:

Sec. 2 All eligible members of the Yankton Sioux Tribe eighteen (18) years of age or older shall be eligible to vote in all tribal elections.

APPROVAL

I, Harley D. Zephier, Area Director of the Aberdeen Area Office, Bureau of Indian Affairs, by virtue of the authority granted to me by 10 BIAM 3.1, hereby approve the attached Amendment IV, which amends Article II, Elections, of the Bylaws of the Yankton Sioux Tribe of South Dakota by adding a Section 3.

(Sgd) Harley D. Zephier
Area Director

Date: June 16, 1975

Aberdeen Area Office
Aberdeen, South Dakota

AMENDMENT
CONSTITUTION AND BYLAWS
OF THE YANKTON SIOUX TRIBE
SOUTH DAKOTA

AMENDMENT IV

Article II, Elections. [sic] of the By-laws shall be amended by adding a Section 3 as follows:

Sec. 3 All elections shall be governed by Section 1 of Article II and ordinances establishing election rules and regulations promulgated by the Yankton Sioux Business and Claims Committee subject to approval by the Yankton Sioux General Council.

EXH 628

Sep 10 1969-18
M-36783

AUTHORITY OF YANKTON SIOUX TRIBE OF SOUTH
DAKOTA TO ESTABLISH A TRIBAL COURT

Indian Tribes: Generally - Indian Tribes: Organized
Tribes - Indians: Law and Order - Courts - Act of
August 15, 1894, 28 Stat. 314

The cession of unallotted lands by the Yankton Sioux Tribe by the Agreement of December 31, 1892, as ratified by the Act of August 15, 1894, 28 Stat. 314 diminished the area over which the tribe might exercise its authority but did not otherwise terminate legislative authority of the tribe; the tribe retained inherent authority to administer justice through a tribal court.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

M-36783

SEP 10 1969

Memorandum

To: Commissioner of Indian Affairs
From: Associate Solicitor, Indian Affairs
Subject: Authority of Yankton Sioux Tribe of South
Dakota to establish a tribal court

We have reviewed the attached proposed letter intended as confirmation of an interpretation of the Act of August 15, 1894, 28 Stat. 314, as related to Mr. Percy Archambeau, Chairman of the Yankton Sioux Tribe of South Dakota. Mr. Archambeau inquired whether the

tribe has authority to establish a tribal court. He was informed, as the proposed letter indicates, that the effect of the 1894 Act was to eliminate reservation boundaries and terminate the tribe's authority to establish a tribal court.

The Act of August 15, 1894, does not expressly provide for the termination of legislative authority of the tribe and in my view it cannot be so construed.

The Yankton Sioux Tribe, as a separate tribal entity, entered into a treaty with the United States on April 19, 1858, 11 Stat. 743, and was thus recognized as possessing internal sovereignty. See *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 78, 91-92 (8th Cir. 1956) and cases cited therein. With regard to sovereign tribal powers, it is said in *Federal Indian Law*, United States Department of the Interior (1958) at page 398:

The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possessed, in the first instance, all the powers of any sovereign State. (2) Conquest rendered the tribe subject to the legislative power of the United States and, in substance, terminated the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, but did not by itself terminate internal sovereignty of the tribe, i.e., its powers of local self government. (3) These internal powers were, of course, subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, many powers of internal sovereignty have remained in the Indian tribes and in their duly constituted organs of government.

Included among those powers of internal sovereignty is the power to administer justice with respect to all disputes and offenses of or among the members of the tribe, other than jurisdiction over crimes reserved to the Federal courts (Solicitor's opinion, 55 I.D. 15 (1934)) or which may have been transferred to the state pursuant to P.L. 280, Act of August 15, 1953, 67 Stat. 589, as amended, 18 U.S.C. 1162 and 28 U.S.C. 1360.¹ See also *Iron Crow v. Oglala Sioux Tribe*, *supra*, and *Colliflower v. Garland*, 342 F.2d 369 (9th. Cir. 1965). The question here is whether the

¹ The State of South Dakota enacted three statutes pursuant to P.L. 280: Chap. 319, Laws of 1957, provided for acceptance of criminal and civil jurisdiction in Indian country conditioned, however, on approval of county commissioners and tribal councils – neither of which gave approval; Chap. 464, Laws of 1961 provided for acceptance of civil and criminal jurisdiction in Indian country with a proviso that except for crimes or causes of action arising on highways the assumption would not become effective until the Governor by proclamation declared jurisdiction assumed; Chap. 467, Laws of 1963 provided unconditionally for the assumption of criminal and civil jurisdiction in Indian country in the state.

The Supreme Court of South Dakota in *In Re Hankins' Petition*, 125 N.W. 2d 839 (S.D. 1964), declared the action in assuming jurisdiction over highways only by Chap. 464, Laws of 1961, to be ineffective. The holding was based on an interpretation of P.L. 280. The court's interpretation of that statute was that it did not permit piecemeal assumption of jurisdiction. Whether this interpretation will be followed in the Federal courts remains to be seen. The Civil Rights Act of 1968, 82 Stat. 73, Title IV, amended P.L. 280 to provide for state assumption of piecemeal jurisdiction both as to area and subject matter.

Chap. 467, Laws of 1963, was referred to the people and in an election held in 1964, was rejected by a vote of 58,289 to 201,389. Session Laws of South Dakota 1965, p. 508.

Act of August 15, 1894, 28 Stat. 314, or any other act of Congress terminated that power.

The 1894 Act provided first for the acceptance, ratification and confirmation of the agreement dated December 31, 1892, between the Yankton Sioux and the United States. The agreement was negotiated on the part of the United States pursuant to authority contained in the Appropriation Act of July 13, 1892, 27 Stat. 137, which provided for "the Secretary of the Interior in his discretion to negotiate with any Indians for the surrender of portions of their respective reservations * * *," subject to ratification by Congress. Provisions of the agreement pertinent to the question here are found in Article I and Article V. Article I provides:

The Yankton Tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as foresaid.

Article V provides in pertinent part:

Out of the interest due to the Yankton Tribe of Sioux Indians by the stipulations of Article III, the United States may set aside and use for the benefit of the tribe, in such manner as the Secretary of the Interior shall determine, as follows: * * * *for courts of justice* and other local institutions for the benefit of the tribe * * * . (Emphasis added.)

After providing for the acceptance of the land ceded, the Act of August 15, 1894, *supra*, provided further:

That the lands by said agreement ceded to the United States shall be subject to disposal only under the homestead and townsite laws of the United States, excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common school purposes and be subject to the laws of the State of South Dakota * * * .

A statute containing provisions in pertinent respects identical to that above quoted from Article I of the 1892 agreement and the 1894 Act was construed in *De Marrias v. State of South Dakota*, 206 F. Supp. 549, 551 (S.D. 1962), *aff'd*, 319 F.2d 845 (8th Cir. 1963). Also involved in that interpretation was the Enabling Act of February 22, 1889, 25 Stat. 676, which in part provides:

That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States * * * .

Such Acts, the court said in *De Marrias*:

* * * constitute explicit manifestations as of the effective dates thereof an intent by the Congress to restore to the public domain all unallotted lands within the Lake Traverse Reservation which were being opened for entry and settlement under the homestead and townsite laws of

the United States and to make those areas subject to the laws of South Dakota.

Equally well manifested by those Acts, though only implicitly inscribed, is a *congressional intent* to diminish the original area limits of the reservation, to *separate jurisdiction* and in the process and as an overall product of the entire arrangement to end 'Indian country' and the reservation status. *The unallotted lands thereafter ceased legally, to be a part of that reservation* * * * . (Emphasis added.)

Thus, it is the clear implication of that decision that though there was a diminution [sic] of the territory over which the tribe might exercise its authority, there was no removal by this act of the tribe's authority over territory not ceded. See also *Beardslee v. United States*, 387 F.2d 280, 286 (8th Cir. 1967). In fact, as indicated by the provision for the expenditure of funds derived from the cession for "courts of justice," there was clearly an intent that the power of the tribe to enact laws and establish courts to enforce those laws was to continue. Even if this provision were construed as providing for an administrative court - i.e., a Court of Indian Offenses of the Federal Government - such establishment would not destroy or limit the legislative powers of the tribe. *Federal Indian Law, supra*, pp. 451-452.

The result of a cession of all unallotted lands was to leave in Indian control lands in a checkerboard pattern. The impracticality of such jurisdiction is recognized. See 61 I.D. 298, 304; *United States v. Black Spotted Horse*, 282 F. 349, 353-354 (S.D. 1922); *Seymour v. Superintendent*, 368 U.S. 351, 359 (1961). However, as stated in *De Marrias*, the checkerboard jurisdiction stems from the acts of Congress

and therefore had the approval of Congress. *De Marrias, supra*, 553. See also *State v. Barnes*, 137 N.W. 2d 683, 687 (S.D. 1965).

Having concluded that the Yankton Sioux Tribe would in legal theory have authority to establish a tribal court, we come to a question as to the extent that the tribe has exercised such authority. The tribe is not organized under the Indian Reorganization Act of June 18, 1934, 48 Stat. 988, as amended, though eligible to do so. It continues to operate under a constitution which predates the Indian Reorganization Act. Article V, Section 3 of that Constitution provides:

The judicial power shall remain in the Tribal membership and upon request of five members for any just cause, such cause shall be submitted at any regular Tribal meeting for action * * * .

Whether this is intended to include criminal as well as civil matters is not clear. It is clear, however, that there is here manifest an intent to exercise judicial authority. Indeed, it appears to be the only substantive provision in the constitution, aside from the provisions on membership and claims, for the exercise of any tribal authority. Were the tribe to organize under the Indian Reorganization Act, *supra*, it presumably could include in a constitution those powers listed in the Solicitor's opinion, 55 I.D. 15, relating to powers of Indian tribes since this tribe is a previously recognized tribe as evidenced by its entry into the Treaty of 1858, *supra*, and the 1892 Agreement, 28 Stat. 314. *Federal Indian Law, supra*, p. 411, n. 36.

The provision in the constitution describing the territory over which the constitution will operate is ambiguous and probably does not encompass the entire area not ceded by the 1892 Agreement. It states:

The territory under which this Constitution shall exist shall extend to all original tribal lands now owned by the Tribe under the Treaty of 1858.

In ordinary usage the words "tribal lands" would refer to lands owned by the tribe and not by members of the tribe. The reference to present ownership would also exclude authority over lands which were not included in the 1894 cession but which were subsequently alienated, i.e., prior to the adoption of the constitution on September 22, 1932. This, though it might affect authority of the tribal government as constituted, does not detract from inherent tribal authority which might be exercised by amending the constitution. We find no other act of Congress which diminishes or limits the inherent authority of the Yankton Sioux Tribe.

In summary, the Act of August 15, 1894, did not limit the authority of the tribe although it did diminish the area over which the tribe might exercise its authority. Authority of the tribe is limited to the areas not ceded by the 1892 Agreement, *supra*, as ratified by the 1894 Act, *supra*. Further, it is evident from the provision in Article V of the constitution that some provision, vague and cumbersome though it is, is made for the exercise of judicial authority. There is no legal impediment to modification by amendment of that authority. Accordingly, we do not endorse the interpretation the proposed letter

would relate to Mr. Archambeau. The letter is returned herewith for whatever further action you deem advisable.

/s/ Earle D. Goss
Earle D. Goss

Attachment

EXH 614

1990 Census of
Population and Housing
Summary Population and
Housing Characteristics
South Dakota

(page 175)

Table 17. Selected Population Characteristics
for American Indian and Alaska Native Areas: 1990

[For definitions of terms and
meanings of symbols, see text]

American Indian, Eskimo, or Aleut

American Indian Area County	All persons	Total
AMERICAN INDIAN RESERVATION AND TRUST LAND		
Cheyenne River Reservation, SD	7 743	5 100
Dewey County	5 523	3 680
Ziebach County	2 220	1 420
Crow Creek Reservation, SD	1 756	1 531
Buffalo County	1 495	1 365
Hughes County	171	129
Hyde County	90	37
Flandreau Reservation, SD	279	249
Moody County	279	249
Lake Traverse (Sisseton) Reservation, ND-SD (pt.)	10 496	2 820
Codington County	218	4

Day County	688	299
Grant County	260	-
Marshall County	1 246	256
Roberts County	3 084	2 261
Lower Brule Reservation, SD	1 123	994
Lyman County	1 106	987
Stanley County	17	7
Northern Cheyenne Reservation and Trust Lands, MT-SD (pt.)	-	-
Northern Cheyenne Trust Lands (pt.)	-	-
Meade County	-	-
Pine Ridge Reservation and Trust Lands, NE-SD (pt.)	12 189	11 166
Pine Ridge Reservation	11 385	10 455
Jackson County	1 483	1 081
Shannon County	9 902	9 374
Pine Ridge Trust Lands (pt.)	804	711
Bennett County	804	711
Rosebud Reservation and Trust Lands, SD	9 696	8 043
Rosebud Reservation	8 352	6 883
Todd County	8 352	6 883
Rosebud Trust Lands	1 344	1 160
Gregory County	135	122
Lyman County	-	-
Mellette County	759	648
Tripp County	450	390
Standing Rock Reservation, ND-SD (pt.)	4 195	2 034
Corson County	4 195	2 034

Turtle Mountain Reservation and Trust Lands, ND-SD (pt.)	-	-
Turtle Mountain Trust Lands (pt.)	-	-
Perkins County	-	-
Yankton Reservation, SD	6 269	1 994
Charles Mix County	6 269	1 994

(Breakdown of age and sex omitted in printing)

EXH 661

58 Federal Register No. 194, Friday, October 8, 1993
(page 52486)

* * * *

South Dakota; Final Determination of Adequacy of State/
Tribal Municipal Solid Waste Permit Program

* * * *

(pages 52488-52489)

* * * *

D. Decision

* * * *

Today's decision to approve the South Dakota MSWLF permitting program does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River;
2. Crow Creek;
3. Flandreau;
4. Lower Brule;
5. Pine Ridge;
6. Rosebud;
7. Sisseton;
8. Standing Rock; and
9. Yankton.

Before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce

in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not satisfied that South Dakota has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of South Dakota choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the South Dakota program for "Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

EXH 662

59 Federal Register No. 67, Thursday, April 7, 1994
(page 16647)

* * * *

ENVIRONMENTAL PROTECTION AGENCY
[FRL-4860-7]

South Dakota; Tentative Determination of Adequacy
of State's Municipal Solid Waste Permit Program over
Non-Indian Lands for the Former Lands of the Yankton
Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of
the Rosebud Indian Reservations

* * * *

(page 16649)

* * * *

On review of the arguments presented and following
consultation with the Department of the Interior, EPA
believes that the State of South Dakota has sufficiently
demonstrated that the former Lake Traverse reservation
was disestablished by Act of Congress (26 Stat. 1039), as
decided by the U.S. Supreme Court in *DeCoteau v. District
County Court*, 420 U.S. 425 (1975).

The Yankton Sioux Tribe argued that the Act of
August 15, 1894 (28 Stat. 286, 314) did not expressly
disestablish the Yankton Sioux Reservation and that the
Federal Court opinions relating to the issue are not con-
trolling. On review of the arguments and consultation
with the Department of the Interior, EPA believes that the
State of South Dakota has sufficiently demonstrated that
the Yankton Sioux Reservation was disestablished by the

Act of 1894. See *Weddell v. Meierhenry*, 636 F.2d 211 (8th
Cir. 1980).

* * * *

A HISTORY OF YANKTON TRIBAL GOVERNANCE

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Officials representing the United States formally recognized the Yankton Sioux Tribe as a political entity through the negotiation of the Yanktons' first treaty in 1815.¹ They sustained the relationship through subsequent treaties in 1830, 1836, 1837, 1851, and 1858.² The latter treaty established two Yankton reservations, and during the summer of 1859 U. S. Agent Alexander at Redfield founded an agency on the larger reservation near Fort Randall, where he established formal relations with the principal chief, Struck By The Ree.³

On the reservation, tribal members gathered as eight bands. For approximately a quarter century, federal officials dealt with them through eight band chiefs, seven of whom had come to office through traditional means. The principal chief Struck By The Ree placed his Cagu Ospaye (band) near the agency. Upstream from the agency, three others settled their groups: Medicine Cow, the Ikmu Ospaye; Feather In His Ear (or Feather In The Ear, better translated as Feather Necklace), his Upper Ospaye; and White Swan, the Witanti Ospaye. Downstream from the agency, three chiefs settled their bands: Smutty Bear (better translated as He Paints Himself Dark Like A Bear), his Lower Ospaye; Francois (Frank) Deloria, the mixed-blood Ospaye; and Mad Bull, the Oyate Sica Ospaye. Northward from Mad Bull's group, along Chouteau Creek east of present-day Wagner, Pretty Boy placed the Waciumpa Ospaye.

On the Yankton as on other reservations during the last half of the nineteenth century, federal officials were reluctant to ignore tribal leaders who had come to power through traditional means, yet preferred to deal with tribal representatives somewhat more favorably disposed toward federal policies. As a method of participation in the selection of the men who represented Yankton people, federal officials first engaged in the practice of "chief making." Every time there seemed to be a need for the creation of a new band in a reservation district, or the chief of an existing band died or retired, the U. S. Agent nominated and the U. S. Commissioner of Indian Affairs "made" (recognized) a chief. Through recognition on the Yankton Reservation, for example, federal officials appointed Frank (Francois) Deloria as the founding chief of a new mixed-blood band; replaced Smutty Bear with Jumping Thunder; replaced Pretty Boy with his son, then with Felix Brunot, then Blue Cloud (William Bean); and replaced Mad Bull with John Ree then with Frank Jandron.⁴ Agency personnel and missionaries publicized chief making with pageantry and feasts that featured gifts of presidential medallions and national flags. Episcopal missionary Joseph Cook described the recognition of John Ree in the Bad Nation Band: "John Ree came in with Pres[ident] Grant's medal around his neck, & very much delighted that he had at last been made chief - Chief at Chouteau Cree[k]. . . . The people at Choteau [sic] inaugurated John's reign among them."⁵

A council of chiefs with headmen (advisers) representing eight bands reluctantly accepted federal authority over its affairs very much due to the persuasive influence of head chief Struck By The Ree. People "implicitly

observed his commands," for he looked after the needs of the entire tribe, and accommodated the vital interests of groups such as the Yanktons, soldiers' society.⁶

U.S. Agent J. F. Kinney appointed a new Board of Advisers during the mid-1880s to challenge the authority of the chiefs, as Struck By The Ree grew old (and died in 1888). Kinney wrote his intention to "tolerate as best we can" the incumbent chiefs as long as they lived, but to usurp their authority by calling together the more compliant Board of Advisers.⁷ Antagonists protested. Incumbent chiefs were enraged about the usurpation of their authority. The son of band chief Medicine Crow, William Selwyn, renounced the Board as the personal instrument of Agent Kinney, and called for the popular election of a "Board of Councillors."⁸

Kinney and his successors, agents Sam T. Leavy and E. W. Foster, weathered the attacks and sustained the Board of Advisers, which grew to a membership of 40 by the year 1890.⁹ Soon after his arrival, in 1891 Agent Foster replaced the Board, much as Selwyn suggested, with a "Speaking Council" guided by a written constitution, with a preamble couched in hallowed phrases: "We the people of the Yankton Sioux Tribe. . . . in order to form a more civilize [sic], perfect and harmonious" government. After gaining approval from the U. S. Commissioner of Indian Affairs for the new constitution, Agent Foster called an assembly of adult tribal members on July 4, 1892, which chose a Speaking Council that comprised four representatives from each of the eight bands – one from each band being the incumbent chief, the other three being representatives elected by the band for terms of one year each.¹⁰

The process of change in tribal governance outlined above approximated one used by federal officials in many tribes across the West. In the Yankton tribe, chiefs who came to office by traditional means served to retirement or death. In their place, an appointed Board of Advisers followed by the elected, constitutional Speaking Council assumed authority to deal with internal affairs of tribal interest, and to represent the tribe in its relations with the United States.

The next stage in the pattern of federal administration was to form an executive, "Business Committee" to make decisions on behalf of the Speaking Council about urgent matters pertaining to land, tribal enrollments, etc. By that time, many prerogatives of reservation management had been taken over by the agency staff at Greenwood, which included the agency (tribal) police (established July 1, 1882) and the Court of Indian Offenses (September 11, 1884).¹¹ Into the twentieth century, these two groups and some part-time Indian employees reinforced a predominantly non-Indian agency staff that purported to assume administrative duties which were not considered to be functions of government retained by the tribe.

Through the first decade of the twentieth century, Greenwood agents (called superintendents after 1903) seldom if ever called the Speaking Council or the Business Committee into session. Yanktons protested, to no avail. Later on, the perceptive Clement Smith harkened back to the consequence: "factional groups" sprang up "here and there . . . over the entire reservation. . . . All of the organizations . . . utterly failed to recognize that inescapable law of mankind 'where there is unity, there is

power.'"¹² Political leaders in the tribe deserved more credit than Smith allowed them, in retrospect. More than failure by them to recognize a need for unity, subversion of traditional leadership and tribal structure by agency staff gave the impression that tribal membership might be in disarray.

Agency officials promoted the division with different treatment for "progressive" and "traditional" Indians. Leaders in both factions existed to promote the best interests of the tribe, as they perceived them. After 1900, Felix Brunot was the primary leader for "progressive" spokesmen comprising Alfred Smith, Peter St. Pierre, Moses Standing Bull, Robert Clarkson, Henry Stricker, and Philip Deloria (who lived on the Standing Rock Reservation). David Zephier spoke for the so-called "dancing gang" that better represented full-blood tribal members. Both groups purported to circumvent the encumbrance of tribal prerogatives by agency personnel with appeals for invitations to travel and represent the tribe in Washington, DC.¹³

For at least a decade, agents at Greenwood all but ignored tribal government, as much as possible. There existed a method for the selection of an executive "Business Committee" to represent the Speaking Council, but in 1903 Agent James Staley (who took charge in 1902) reported that there was no "business committee" to represent the tribe in such matters as land management and the distribution of annuities.¹⁴ In fact, the Business Committee could meet for deliberations at Greenwood only when an agent or superintendent called it into session. Doubtless one reason that agents failed to call Business Committee meetings was a rapid turnover among agents

and superintendents at Greenwood. In the period 1859-1933 there were 29 agents or superintendents. Between 1894 and 1912 there were 8, no one of which remained in office for very long.¹⁵

Finally in 1912, an agent appeared who would last for a decade. Almost immediately A. W. Leech authorized the selection of a Business Committee to conduct tribal affairs. On April 6, voters gathered and chose a group with 12 members plus 2 officers. Unfortunately, officials in Washington, DC, declined to recognize this committee with the explanations that the voter turnout was inadequate, that voters elected "somewhat nonprogressive Indians," that the Business Committee did not adequately represent the entire tribe, and that it did not comprise mainly "progressive councilmen."¹⁶ The committee of "somewhat non-progressive" members included: Reverend Pierre LaPoint (chairman), Alfred C. Smith (secretary), Simon Antelope, Eagletrack, Blue Cloud, Louis St. Pierre, Thunderhorse, Adam Sitting Crow, Isaac Omaha, Big Tobacco, John Jandreau, John Feather, Matthew Leed, and Felix Cetan. According to the memories of elders in recent years, this committee included some of the most able members of the tribe, but in the main they were traditionalists, and very much for this reason officials in Washington, DC, declined to deal with them. Nowhere in correspondence was there a hint of denial that Yankton tribal self government abided, however, or a suggestion that federal officials might not recognize a committee to carry on Yankton tribal governance. The issue was whether officials in Washington, DC, would deal with one particular group of elected tribal officials.

Agent Leech continued to sanction the election of tribal business committees – in 1913, 1914, 1918, and 1920. None accomplished very much in matters of general concern to the tribe, but their existence nurtured tribal governance and its recognition by federal officials.¹⁷ During the period 1912-1920, most tribal business pertained to the replacement of trust patents with fee patents on allotments, sales of fee patent lands, and distributions of tribal funds, all of which were under the purview of agency personnel. Federally-recognized tribal government existed, nevertheless, but a pressing need for its services on behalf of all Yankton people did not return until 1920, after which date two congressional Indian claims acts (1920 and 1925) extended to Yanktons an opportunity to enter claims against the United States.¹⁸ The act of 1920 evoked claims petitions from the Yankton with many other tribes regarding the loss of the Black Hills region. The act of 1925 called for judicial action regarding tribal ownership at the Yankton's Pipestone Reservation.¹⁹

Quickly in 1921, adult Yanktons assembled and chose Alfred Smith to present their claims against the United States. In 1924, they elected a 9-member "Yankton Sioux Claims Committee," which included fair representation for both "progressives" and "traditionalists." The Claims Committee contracted the services of attorneys Munn, Anderson and Munn in Washington, DC, to represent the tribe. The committee's first order of business was protest against past encroachment on the Pipestone Reservation, and next a decision about its sale to the United States. In

1929, Congress allocated \$328,558.90, which federal officials distributed among Yanktons in per capita payments.²⁰

The Yankton Sioux Claims Committee exercised other prerogatives of governance, the most important of which was leadership in a movement that led to the adoption and federal approval of the Yankton Sioux Constitution of 1932, which authorized the election of the Yankton-Sioux Tribal Business and Claims Committee. With abiding federal recognition, this constitution with by-laws has remained the organic law for the tribe, modified substantially only through a constitution reorganization process initiated in 1961. Yankton governmental officials dealt with federal officials through a sub-agency office under the Rosebud Superintendency from 1933 to 1969, since which time they have had the benefit of their own U. S. Superintendency at Wagner.

The experience of Yanktons with self-government and its relationship to federal officials, outlined above, was fairly typical of experiences for all Sioux in the United States, except the Dakotas (eastern Sioux tribes) who lived in Minnesota. Some of those west of Minnesota were more assertive than others, due to the pressures of tribal business. Through the period 1900-1933, all struggled for continuity in governance because of neglect by federal agents. In the case of the Yanktons, never did tribal leadership disappear, and never did a federal spokesman with authority suggest the withdrawal of federal recognition for this tribe. From the negotiation of the first Yankton treaty in 1815 to the present, there has existed a "government-to-government relationship" between the Yankton Sioux Tribe and the United States

Government. The condition of tribal governance in all federally recognized tribes – including the Yankton – recently was identified by spokespersons for the U. S. Bureau of Indian Affairs as being “what our courts have come to refer to as quasi-sovereign domestic dependent nations.” Defended by the trust responsibility of the federal government, “Elected tribal governments run Indian reservations. The Bureau’s main goal is to support tribal efforts to govern their own reservation communities.” By implication, this prerogative calls elected tribal leaders especially to look after the interests of tribal members in all public affairs that affect them within the outer boundaries of their reservations.²¹

¹ 7 Stat., p. 129.

² Charles J. Kappler (comp. and ed.). *Indian Treaties, 1778-1883* (New York: Interland Publishing, Inc., 1972): pp. 227-29, 250-255, 479-481, 496-497, 505-510, 594-596; 11 Stat., p. 743.

³ A general history of the management of land within the boundaries of the Yankton Sioux Reservation is available in the exhibit by Herbert T. Hoover entitled “A Yankton Sioux Tribal Land History.”

⁴ See Herbert T. Hoover. “Yankton Sioux Experience in the ‘Great Indian Depression,’ 1900-1930,” *The American West* (Toledo: University of Toledo Press, 1980): p. 57.

⁵ Joseph Cook Diary. 1875-1876. Episcopal Archives, The Center For Western Studies, Augustana College, Sioux Falls, SD.

⁶ Father Pierre Jean DeSmet to the Commissioner of Indian Affairs, June 1, 1861, Desmetiana Microfilm Collection, St. Louis University Library.

⁷ J. F. Kinney to A. B. Upshaw, November 18, 1885, Letters Received by the Office of Indian Affairs, National Archives [hereafter cited as Letters Received, NA].

⁸ William Selwyn to the Commissioner of Indian Affairs, September 17, 1885, Letters Received, NA.

⁹ Agent E. W. Foster to T. J. Morgan, December 1, 1890, J. A. Smith to Commissioner Browning, February 20, 1894. Letters Received, NA.

¹⁰ Hoover, “Yankton Sioux Experience,” pp. 61-63.

¹¹ *Report of the Commissioner of Indian Affairs* (1882), p. 49, (1886), p. 93, (1891), pp. 427-428, (1886), p. 99, (1888), p. 64, (1889), p. 171, (1896), p. 305, (1897), p. 282, (1898), p. 289, (1899), p. 349, (1901), p. 378, (1905), p. 351.

¹² Minutes of the Tribal Council, Yankton Sub-agency, September 22, 1934, Indian Central Classified File, National Archives [hereafter cited as ICCF, NA].

¹³ R. G. Taylor to the Commissioner of Indian Affairs, January 16, 1905, David Zephier to the commissioner of Indian Affairs, April 6, 1906, Letters Received, NA.

¹⁴ James Stanley to Indian Commissioner, May 12, 1903, Letters Received, NA.

¹⁵ The succession of agents with dates of tenure for those of most consequence follows: Alexander H. Redfield, 1859-1861; Dr. Walter A. Burleigh, 1861-1865; Patrick H. Conger, 1865-1869; Captain W. J. Broatch; Major John M. Goodhue; S. D. Webster; Dr. Frederick G. Holmes; Reverend John G. Gassman, 1872-1878; John W. Douglas; W. D. E. Andrus, May 1, 1879-May 16, 1879; Robert S. Gardner; W. D. E. Andrus, August 14, 1879-1882; William M. Ridpath, 1882-1883; J. F. Kinney, 1884-1888; Sam T. Leavy; E. W. Foster, 1890-1893; J. A. Smith, 1894-1897; John W. Harding, 1898-1901; James Staley; A. O. Wright; R. J. Taylor; E. W. Estep; Walter Runge; A. W. Leech, 1912-1922; H. K. Meyer; R. E. L. Daniel, 1923-1930; J. V. King; C. C. Hickman, 1931-1933; Peyton Carter (School Superintendent) closed Yankton Agency and replaced it with a Rosebud sub-agency July 1, 1933.

¹⁶ A. W. Leech to the Commissioner of Indian Affairs, May 10, 1912, Rev. Pierre LaPoint and Alfred Smith to A. W. Leech, May 15, 1912, C. F. Hanke to A. W. Leech, May 24, 1912, ICCF, NA.

¹⁷ Alexander Horned Eagle to the Commissioner of Indian Affairs, January 11, 1913, E. B. Merritt to A. W. Leech, March 4, 1914, James McLaughlin to the Secretary of the Interior, January 12, 1915, Statement of Superintendent A. W. Leech, January 23, 1918, Hearing before E. W. Merritt, February 3, 1920, Cato Sells to Hollow Horn, et al., February 6, 1920, E. B. Merritt to A. W. Leech, September 7, 1920, Unsigned Letter to the Secretary of the Interior, March 5, 1921, ICCF, NA.

¹⁸ 36 Stat., p. 269; 53 U.S. Court of Claims, p. 67; 67 Stat., p. 738; 43 Stat., p. 730.

¹⁹ See Herbert T. Hoover and Leonard R. Bruguier. "The Pipestone Reservation: A History." *Chouteau Heritage*, II, no. 1 (April 1989): pp. 9-11.

²⁰ Herbert T. Hoover. "Yankton Sioux Tribal Claims Against the United States, 1917-1975." *The Western Historical Quarterly*, VII, no. 2 (April 1976): pp. 131-132; "Yankton Sioux Experience," p. 65.

²¹ *American Indians Today* (Bureau of Indian Affairs, 1991): pp. 1, 5.

YANKTON SIOUX TRIBAL LAND HISTORY

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In the year 1980, nearly 4,500 enrolled tribal members owned 34,802 acres of land within the boundaries of the Yankton Sioux Reservation – about 8% of the acreage set aside by treaty in 1858. On this limited acreage, the resident population struggled because of an unemployment rate of 76.9%. In 1987, some 5,200 were enrolled and at least 2,980 lived within reservation boundaries containing some 37,000 acres as tribal lands or individual allotments, where they continued to deal with a high unemployment rate. In 1993, approximately 6,000 people were enrolled, about 3,400 of whom lived on the reservation. In large part due to the addition of the Fort Randall Casino to tribal properties in 1991, tribal officials reported no unemployment among members who lived on the reservation, and expressed an intention to further enlarge tribal land holdings within reservation boundaries. In January 1995, tribal officials reported an enrollment of approximately 6,700, about half of them regarded as reservation residents. Bureau of Indian Affairs officials at the Wagner Superintendency reported nearly 38,000 acres of Indian land: 23,663 held as individual allotments, some 13,000 as tribal land, and at least 1,000 acres not yet in trust but soon to be added to the other holdings under the trust responsibility of the United States. This scattered information suggests that distinguishing features during recent years have been steady growth in the size of the tribal roll, corresponding increase in the size of the

tribal population living on or near the reservation, the disappearance of unemployment among Yankton reservation residents, a reversal in the historical trend of land loss with some increase in the number of acres within reservation boundaries classified as tribal or individual allotments under federal trust, and a growing propensity among Yankton Sioux to live and to earn a livelihood within reservation boundaries.

Yanktons belong to 1 of 14 tribes in the federation of Sioux that on the arrival of non-Indians during the seventeenth century comprised about 32,000 people who claimed use rights on approximately 100,000,000 acres. When during the eighteenth century members of the federation spread by tribes and bands to occupy this historic Sioux Country, (about 2,000) Yanktons took residence over the central portion between the Des Moines and Missouri rivers, south of the present boundary that divides South Dakota from North Dakota. By the outset of the nineteenth century, they possessed uncontested claim to more than 13,000,000 acres.¹

Their first treaty with the United States came at Portage des Sioux, in 1815, where St. Louis U. S. Superintendent William Clark established formal relationships of "perpetual peace and friendship" with many tribes by treaties that placed them "under the protection of the United States" in the wake of the War of 1812.² By treaties dated 1830, 1836, and 1837, Yankton leaders relinquished approximately 2,220,000 acres in return for annuities plus rights for mixed-bloods in the tribe to settled on the Great Nemaha "Half Breed Reservation" in southeastern Nebraska.³ Smutty Bear (Mato Sabi Ceya, or He Paints Himself Dark Like A Bear) represented Yankton people

when he signed the Fort Laramie Treaty of 1851, thereby laying partial claim to land west of the Missouri River.⁴ Regarding claim east of the Missouri, by treaty in 1858 Yankton leaders ceded 11,155,890 acres, but retained two reservations: one for occupancy surrounding a new agency near Fort Randall comprising by treaty 400,000 acres (later surveyed to contain 430,405 acres); and the Pipestone Reservation (surveyed in 1860 at 648.2 acres).⁵

In return for the land cession, by treaty in 1858 the United States promised to pay \$50,000 to facilitate settlement, \$1,600,000 in annuities over 50 years, construction of schools and agency facilities, and an agent "for the special benefit" of the tribe plus "free and unrestricted use of the red pipe-stone quarry" (which Yanktons sold to the United States in 1929 for \$328,558.90).⁶ On July 10, 1859, U. S. Agent Alexander Redfield rode the steamboat *Carrier* out of Yankton city to found the agency between Chouteau Creek and Fort Randall. "Head Chief" Struck By The Ree followed, and within a few months some 2,000 tribal members pitched their tepees close to the agency. Yanktons entered a revolution in life style as they accepted confinement on the reservation. Seven band chiefs (soon enlarged to eight) settled tribal members, and attended to treaty terms that allocated special benefits to mixed-blood families in the tribe.⁷

In 1859, surveyors C. H. Snow and Henry Hutton marked the outer boundaries of the principal reservation and surveyed 166 rectangular lots for family assignment - 87 downstream and 79 upstream from the agency.⁸ By 1860, there were 2,053 Yanktons on the reservation, segregated as seven bands.⁹ Aside from comments about problems of administration, Agent Redfield complained only

that "whiskey sellers & other malefactors begin to afflict us."¹⁰ Yanktons continued to hunt for a time, ranging along both sides of the Missouri River from the Platte River to the Canadian border. They faced drought with grasshopper plagues and struggled for livelihood with the help of treaty annuities under some fraudulent and incompetent agency administrations.

Missionaries appeared. The Episcopal minister Samuel D. Hinman stopped by in 1863, and Father Pierre Jean Desmid, S. J., visited to baptize a Catholic congregation. Episcopal layman Paul Malamute wintered over in 1863-1864. Presbyterian H. C. Cunningham worked around the Yankton's Greenwood Agency briefly in 1864, Presbyterian John P. Williamson arrived as the first resident missionary in 1869, and Episcopal Father Joseph Cook settled at Greenwood in 1870.

As mission and federal facilities came into place, agency personnel gradually replaced "recalcitrant" band chiefs with others more amenable to federal objectives; established in their place a "Board of Advisers" in 1885, which grew to include as many as 40 members by 1890; and replaced the Board with a "Speaking Council" in 1891, which comprised members elected by the general council of voting members in the tribe, and took guidance from a written constitution. The U. S. Agent formally organized the Speaking Council on July 4, 1892, with four members from each of the eight bands.¹¹

By that time, agency officials had established reservation wide administration. Beginning in the 1860s, a "Chief Farmer" managed the 360.73-acre agency compound at Greenwood, while he supervised agricultural

development and acculturation across the reservation. The U. S. Agent founded a tribal police force on July 1, 1882, and started a Court of Indian offenses on September 1, 1884.¹²

With ample administrative control and support from mission staff, federal officials proceeded to dramatically change land ownership within reservation boundaries through individual allotment followed by "surplus-land" and fee-land sales. Yanktons entered the 1890s with 430,405 acres. By the year 1930, they had divested themselves of ownership on 387,047 acres and retained only 43,358.¹³

The key to this change was the allotment process, which on the Yankton reservation evolved through several stages. In 1869, Moses K. Armstrong conducted a second survey of family lots - 177 of 80 acres each. In 1874, J. W. Beaman surveyed additional lots of 40 acres each, to make one available to each family. Yanktons settled mainly close to the Missouri River or in the brakes of the Missouri Hills, where they erected log homes and began to ranch and farm.¹⁴

Then came the General Allotment (Dawes) Act of 1887, which negated previous family assignments and called for the individual allotment of land. When some Yanktons resisted, four companies of troops came down from Fort Randall to declare martial law and restore order. In 1889 Allotting Agent J. G. Hatchitt arrived to parcel out 160 acres to each family head, and 80 each to each single person over 18 years of age. Protests encumbered his work, but he reported the completion of the initial allotment process by the summer of 1890. Hatchitt

continued to refine his list, and by 1892 reported the assignment of some 1,700 allotments comprising approximately 262,000 acres. His report negated all previous land assignments, and called on tribal members to scattered [sic] on their new family farms.¹⁵

Non-Indians lobbied for the federal purchase of the "surplus land" (left over after allotment) and for its opening to homesteaders. The new South Dakota State Legislature memorialized Congress to accomplish this goal. Tribal member Andrew Jones gathered 370 tribal signatures to support the surplus land sale for funds to develop agriculture on restricted severalty lands. About half the members of the Speaking Council voiced their opposition, however, and called for a delay to determine the size of the proposed surplus-land sale.¹⁶

The quarrel brought negotiations to a halt, after opponents discovered that the amount of the surplus sale would be more than 150,000 acres. A federal commission of three members – John C. Cole, a Dr. Brown, and Colonel J. C. Adams – came to conduct hearings to determine tribal opinion. With hearings in progress until March 3, 1893, the commissioners isolated supporters, solicited their help by promising that no man's opinion would be made public, and evidently spread the word that a \$20 gold piece would be awarded to every adult male if the surplus-land sale were accomplished.¹⁷

Presbyterian John P. Williamson, the most trusted among Christian missionaries on the reservation, became the custodian for land-sale agreement records, and reported assent from a clear majority for the sale of 168,000 acres at a fixed price. Former U. S. Army Scouts

in the tribe voiced their support when they heard that their claims for fair payment for services rendered during the 1860s would be honored only if the land-sale agreement went through.¹⁸

Protests continued. Finally, U. S. Indian Commissioner Thomas Morgan ordered an investigation by Special Agent James A. Cooper. Joined by Adams and Cole, he conducted hearings at Greenwood in the company of interpreters Charles F. Picotte, Henry Bonnin, and William T. Selwyn. An assembly of 176 aired views about bribes with the offer of \$20 in gold for each adult male, and claims payments for the scouts, and heard threats regarding the probable suspension of annuity rations due them under the 1858 treaty if the surplus land sale did not go through. Protestors insisted that the land sale should not go through except by consensus, but Cooper stifled their orations. At length, the Indian Commissioner apprised the U. S. Secretary of the Interior about allegations of "fraud or undue pressure . . . used in securing the agreement" and ordered a second investigation. Indian Inspector John W. Cadman appeared on November 4 and heard testimonies from 79 or some 200 gathered at Greenwood. Cadman allowed open discussion, which revealed undue pressure and the offer of bribes. Some came forward to withdraw signatures previously affixed on the land-sale agreement. In the end, Cadman said he could not report that the land-sale proposal was popular in the tribe, but because he perceived the support of a majority he urged that the land-sale agreement should stand as previously negotiated.¹⁹

Although negotiated through considerable dispute, the Agreement of December 31, 1892, went before Congress and became law on August 15, 1894. Its terms called for the sale of "the unallotted lands" within reservation boundaries for \$600,000. It also authorized the lease of allotment lands not useful to allottees, and included all of the payments perceived by opponents as bribes, together with special compensation for the interpreters.²⁰

By the Agreement of 1894, Yanktons relinquished 131,736.56 acres set aside by treaty plus the 30,405 acres added through the correction of the original survey – a total of 162,141.56 acres. Yanktons retained 268,263.44 acres for allotments and other uses – approximately 150 acres per capita. (Their roll of 1895 included 1,725 members.)²¹

Several elements in the surplus-land sale Agreement approved on August 15, 1894, are revealing. Inducements regarded by opponents of the sale as bribes are included: in Article VII, the distribution of \$20 coins among adult males; in Article XV, a payment of \$225 to each of the Yankton scouts; and in the addendum, at minimal cost provision for patents to valuable home lots near the agency compound for interpreters Charles Picotte, Felix Brunot, and W. T. Selwyn. (Evidently, Felix Brunot had replaced Henry Bonnín in the staff of interpreters.)

Regarding congressional intentions about the retention of boundaries surrounding the two Yankton reservations, there is clear expression in Article XVIII:

Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and

the United States. And after the signing of this agreement, and its ratification by Congress, all provisions of the said treaty of April 19th, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858.

This part of the Agreement clearly recognized "all provisions" in the 1858 treaty, and probably included specific reference to annuities because during negotiations tribal members were led to believe that their annuity benefits might have been suspended had not a majority in the tribe acceded to the terms of the 1894 Agreement.

Equally revealing is the proscription on future sales of spirituous beverages, in Article XVII:

No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded and sold to the United States, nor upon any other lands within or comprising the reservations [both reservations] of the Yankton Sioux or Dakota Indians as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians. The penalty for the violation of this provision may prescribe in the act shall be such as Congress may prescribe in the act ratifying this agreement.

When examined out of historical context, on its face Article XVII might seem almost incidental. When perceived in the historical context of federal efforts to control the traffic of spirituous beverages and other "vices" (such

as prostitution and gambling), the Article reveals both congressional and federal administrative intent.

This issue has been explored under peer review in the article by Herbert T. Hoover entitled "Whiskey Trade in the History of Sioux Country."²² The history of control over this problem extended from the outset of the nineteenth century to the implementation of Public Law 277 by the 3rd Congress in 1953, which legalized the sale of intoxicants on Indian reservations. Over approximately a century and a half, Congress legislated and federal administrators worked to curtail the problem of "vice" in two ways: sometimes by prohibiting the sales of spirituous beverages and other inducements to individual Indians, but more often by prohibiting their entry into Indian Country.

"Indian Country" was first defined by an act of Congress in 1797, which made specific reference to tribal boundaries and recognized the lands they contained as Indian Country within the United States.²³ Federal officials worked to control the whiskey traffic mainly by prohibiting sales to Indian people until 1832, when Congress passed and President Andrew Jackson signed on July 9 a more general law.²⁴ When the astute U. S. Superintendent at St. Louis William Clark received word of this from officials in the U. S. Department of War, he responded in correspondence that Congress had prohibited "The admission of the article in question ['ardent spirits'] under any pretense, into Indian country."²⁵ With an act of June 30, 1834, Congress strengthened its prohibition of ardent spirits in Indian Country, and authorized fines, seizures, and the revocation of trading licenses for violations.²⁶ Thereafter, the emphasis of control shifted

from the prohibition of sales to individual Indians to the prohibition of sales within boundaries containing Indian Country, although the control of sales to individual Indians continued. One important instance (included in the article cited above) was the annexation by President Ulysses Grant of several parcels of land to the Great Sioux Reservation and the Yankton Reservation as "Executive Additions." Along the Missouri River from the upper end of the Yankton Sioux Reservation to the Fort Peck region, and onto ceded land in Nebraska adjacent to Pine Ridge, the president temporarily extended the boundaries of the Great Sioux and Yankton reservations to control the sale of whiskey or the entry of other vices – not by prohibition of sales to individual Indians but by prohibition of sales in Indian Country.²⁷

Taken in this context, congressional intentions while drafting Article XVII of the Yanktons surplus-land-sale agreement become more vivid. Congressmen recognized the boundaries of both Yankton reservations as borders containing parts of Indian Country, for administrative control. Any doubt that this was true is dispelled by the presidential proclamation of 1895 that opened Yanktons' ceded lands to non-Indian settlement. It said that: every person who shall sell or give away any intoxicating liquors or other intoxicants upon any of the lands by said agreement ceded, or upon any of the lands included in the Yankton Sioux Indian Reservation as created by the treaty of April nineteenth, eighteen hundred and fifty-eight, shall be punishable by imprisonment for not more than two years and by a fine of not more than three hundred dollars.²⁸

Thereafter, both congressional and administrative controls shifted emphasis to the "sale, gift, barter, etc." of spirituous beverages and other intoxicants to trust-patent Indians of all blood quantum, but the proscription against sales within the boundaries of Indian Country remained. A case in point (included in the article cited above) was the confiscation by tribal police of 73 gallons of alcohol and other properties belonging to Lawrence Antoine and George White while they were en route across the Rosebud Reservation to a rodeo-fair at Parmelee.²⁹ The prohibition of sales within the boundaries of Indian Country remained (with modification by the Indian Reorganization Act of 1934) until the implementation of Public Law 277 in 1953. Included were both Yankton Sioux reservations until the sale of the Pipestone Reservation in 1929, and thereafter the Yankton Reservation near Fort Randall, with modification after 1934, until 1953. When perceived in the general context of federal controls over the whiskey trade and other vice traffic across Indian Country, the intention of congressmen to recognize and not to diminish the boundaries of the Yankton Reservation seems clear.

After the land sale agreement of 1894 and the opening of surplus lands for settlement by presidential proclamation in 1895, funds derived from the sale of the surplus lands plus allotments taken in fee-simple title generated funds that sustained the tribe for less than half a century. A new roll of tribal members published in 1921 facilitated the distribution of a balance of \$103,611.87 in the land-sale tribal fund by per capita shares of \$163.94 each.³⁰ Previous per capita distributions of interest from the tribal fund, proceeds from restricted allotment leases and

sales, and profits from the work of trust-patent allottees went into Individual Indian Money (IIM) accounts under bond at local banks. In 1910 there was an aggregate of \$634,463.97 in 904 IIM accounts; and in 1921 an aggregate of \$626,382.25 in 1,552 accounts.³¹ But soon, in the absence of a substantial land base, these funds melted away mainly through expenditures on the necessities of life.

Meanwhile, federal officials and mission societies retained control over the acreages at the agency and on mission grounds. There also was Lake Andes Farm Station #2, set aside in 1894 by federal officials as an "Administrative Site" to house an Assistant U. S. Farmer to work among allottees at the upper end of the reservation. So it was used until April 18, 1932, when the farm station was disbanded as the Yankton Agency became a sub-agency under the Rosebud Agency (until 1969). Clarence Forman, Sr., occupied the Lake Andes Farm Station. Born on December 18, 1892, he had received an allotment, but had lost it through cancellation for reasons he never understood. In lieu of this as well as a reward for his services as a tribal spokesman, U. S. Superintendent C. C. Hickman offered him the use of the buildings and 84.90 acres without rental fee. Other tribal members complained. On February 28, 1946, the U. S. Secretary of the Interior turned control (not ownership) over to the tribe. In 1962 the tribal council ordered Forman's eviction, and on November 24, 1964, he moved to private housing in Lake Andes. Tribal officials took over the site on behalf of the tribe, and since there has evolved here a cluster-housing unit, a pow-wow ground, and other tribal facilities.³²

A decline in land under trust within reservation boundaries from 43,358 acres in 1930 to 34,802 acres by 1980 came partly through the sales of fee lands by individual allottees or their heirs, and partly due to a loss of 3,349 acres to the Fort Randall Dam project.³³ In the same period, federal officials acquired by authorization from the Indian Reorganization Act of 1934 and transferred title under trust several acreages surrounding four communal colonies created under Indian New Deal management, the largest among which was the Rising Hail Colony west of Marty, SD. After this and the three other communal efforts collapsed, federal officials transferred some 1,700 acres in the Rising Hail project to the tribe, and far lesser amounts at the other three colonies.

A gradual decline in the aggregate of trust land continued until the 1980s, despite several additions to tribal properties. Since 1980, however, the land base of the tribe and its members has begun to grow, along with the size of the tribal roll and the number of Yankton Sioux with residence on their reservation. No official map of the Yankton Reservation discovered by this writer has presented a diminishment of its boundaries. Every map seems to contain outer boundaries as they were established by treaty in 1858 and surveyed prior to the surplus-land agreement, which indicated a total of 430,405 acres.

¹ Herbert T. Hoover. "Yankton Sioux Tribal Claims Against the United States, 1917-1975." *The Western Historical Quarterly*, VII, no. 2 (April 1976): p. 125.

² 7 Stat., p. 129.

³ Charles J. Kappler (comp. and ed.). *Indian Treaties, 1778-1883* (New York: Interland Publishing, Inc., 1972): pp. 227-229, 250-255, 479-481, 496-497, 505-510.

⁴ *Ibid.*, pp. 594-596.

⁵ 11 Stat., p. 743; J. M. Armstrong to Commissioner of Indian Affairs Ezra A. Hayt, March 17, 1879, Letters Received by the office of Indian Affairs, National Archives [hereafter cited as Letters Received, NA].

⁶ Herbert T. Hoover and Leonard R. Bruguier. "The Pipestone Reservation: A History." *Coteau Heritage*, II, no. 1 (April 1989): pp. 9-11.

⁷ For general context, read Herbert T. Hoover. *The Yankton Sioux* (New York: Chelsea House Publishers, 1988).

⁸ "Description of Original Plot of Yankton Reservation, 1859." M234, roll 959, NA. External boundaries of the reservation were surveyed again in 1864, valley lots again established in 1869, and the entire reservation re-surveyed for allotment and surplus land sales in the 1890s. Receipt for Exterior Boundary Survey signed by George A. Popper, September 30, 1864; Land Office Commissioner to Indian Commissioner Eli S. Parker, October 25, 1869. M234, roll 960, NA.

⁹ *Report of the Commissioner of Indian Affairs* (1891), p. 424.

¹⁰ A. R. Redfield to A. B. Greenwood, April 3, 1860. M234, roll 959, NA.

¹¹ J. F. Kinney to A. B. Upshaw, November 18, 1885, Agent E. W. Foster to T. J. Morgan, December 1, 1890, Letters Received, NA; Herbert T. Hoover. "Yankton Sioux Experience in the 'Great Indian Depression,' 1900-1930," *The American West* (Toledo: University of Toledo Press, 1980): pp. 61-63.

¹² *Report of the Commissioner of Indian Affairs* (1882), p. 49, (1886), pp. 93, 99, (1888), p. 64, (1891), pp. 427-428; "Special Report on the Yankton Agency from Inspection Held January 15-21, 1916," Indian Central Classified File, NA [hereafter cited as ICCF, NA].

¹³ Kappler. *Indian Treaties*, pp. 776-777; "Report of the Yankton Indian Commission," March 31, 1893, Letters Received, NA; "Memorandum to Commissioner Collier," June 1, 1940, ICCF, NA.

¹⁴ Agent Goodhue to Indian Commissioner E. S. Parker, September 9, 1870, Land Office Commissioner to Indian Commissioner Ely S. Parker, August 23, 1870, November 8, 1870, and November 23, 1870, Agent John G. Gassman to Commissioner F. A. Walker, July 26, 1872, M234, roll 961, NA; M. K. Armstrong to Acting Commissioner of Indian Affairs, January 24, 1873, Land office Commissioner to Indian Commissioner E. P. Smith, November 9, 1875, M234, roll 962, NA; *Report of the Commissioner of Indian Affairs* (1870), pp. 212-213; John P. Williamson to Father, September 25, 1874, Williamson Family Papers, Minnesota Historical Society Archives, St. Paul, MN.

¹⁵ Agent J. F. Kinney to J. D. C. Atkins, February 6, 1887, J. F. Kinney to commissioner of Indian Affairs, April 22, 1887, Acting Secretary of the Interior to the Secretary of War, September 9, 1887, Inspector Banister to the Secretary of the Interior, September 13, 1887, Henry R. West to Commissioner D. C. Atkins, March 7, 1888, J. G. Hatchitt to R. V. Belt, July 10, 1889, Acting Secretary of the Interior to the Commissioner of Indian Affairs, August 26, 1889, J. G. Hatchitt to T. J. Morgan, September 7, 1889, September 28, 1889, J. G. Hatchitt to R. V. Belt, September 21, 1889, November 2, 1889, December 22, 1889, James G. Hatchitt to the Indian Commissioner, March 29, 1890, Agent E. W. Foster to Commissioner T. J. Morgan, April 30, 1890, April 18, 1891, March 22, 1892, J. G. Hatchitt to the Commissioner of Indian Affairs, July 14, 1891, December 28, 1891, June 24, 1892, Robert G. Clarkson et al. to Commissioner of Indian Affairs, December 1, 1891, Letters Received, NA; Secretary of the Interior C. Schurz to Commissioner R. V. Belt, April 2, 1887, M234, roll 260, NA; "Suggestions for the Rehabilitation of Yankton Sioux Indians, Submitted by Yankton Rehabilitation Committee, June 10, 1943," ICCF, NA; *Report of the Commissioner of Indian Affairs* (1887), pp. 58-59, (1888), p. 69, (1889), p. 172, (1891), p. 427; Winifred Williamson Barton. *John P. Williamson, Brother of the Sioux* (New York: Fleming H. Revell Company, 1919): pp. 156-157; *The Word Carrier*, February 1890; Special Case File no. 147, NA. Allotting Agent Henry E. West accomplished some work on allotment before Hatchitt arrived. Hatchitt reviewed the work of West and incorporated his accepted schedule of allotments into the final list, but the final list was developed by Hatchitt.

¹⁶ "Memorial from Legislature of State of South Dakota to Congress to Open to Settlement the Yankton Indian Reservation Under the Homestead Law," February 21, 1890, J. A. Pickler to the Commissioner of Indian Affairs, n.d. [1890], Greenwood Government Indian School Superintendent W. Rich to the Commissioner of Indian Affairs, February 15, 1890, Letters Received, NA.

¹⁷ "Report of the Yankton Indian Commission," March 31, 1893, Letters Received, NA.

¹⁸ Yankton Indian Commission to the Secretary of the Interior, March 31, 1893, John J. Cole to Acting Indian Commissioner Frank C. Armstrong, August 1, 1893, Jumping Thunder, et al., to Indian Commissioner T. J. Morgan, February 8, 1893, Letters Received, NA.

¹⁹ Report by Commissioners J. C. Adams and J. J. Cole, February 18, 1893, Council of Investigation called by James A. Cooper, February 21, 1893, James A. Cooper to the Commissioner of Indian Affairs, March 31, 1893, Council of Investigation, February 24, 1893, Letters Received, NA.

²⁰ 28 Stat., p. 314.

²¹ Agent J. Smith to Commissioner D. M. Browning, January 5, 1894, Letters Received, NA.

²² *Platte Valley Review*, XIX, no. 1 (Winter 1991): 5-24.

²³ 1 Stat., 469.

²⁴ 4 Stat., 564.

²⁵ William Clark to Lewis Cass, December 30, 1832, M234, roll 750, NA.

²⁶ 4 Stat., 729.

²⁷ Information about the Executive Additions appears in several places. For example, see Ulysses Grant's "Executive Mansion" orders of January 11, March 16, and May 25, 1875, in Cheyenne River Sioux Files; and Executive Order of January 24, 1882, Pine Ridge Microfilm Series, Federal Archive, Kansas City.

²⁸ 29 Stat., 866.

²⁹ U. S. v. Elmer Hannum and Howard Munce to U. S. District Court, South Dakota, Western Division, ICCF, #162, NA.

³⁰ E. B. Meritt to Senator Ed. S. Johnson, February 11, 1916, A. W. Leech to the Commissioner of Indian Affairs, November 17, 1919, C. J. Roads to Senator Peter Norbeck, April 3, 1933, F. H. Daiker to Clarence Forman, et al., September 31, 1940, ICCF, NA; Laurence Schmeckebier. *The Office of Indian Affairs: Its History, Activities, and Organization* (Baltimore: Johns Hopkins Press, 1927): pp. 88-89, 144, 194.

³¹ Inspector Report of Edgar A. Allen, January 21, 1910, Inspector Report of John W. Bale, May 22, 1920, ICCF, NA.

³² Herbert T. Hoover. "Lake Andes Farm Station #2." 11 Manuscript in historical sites file of the author.

³³ Michael L. Lawson. *Dammed Indians* (Norman: University of Oklahoma Press, 1982): p. 50.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

The Yankton Sioux Tribe, a	*	
federally recognized tribe of	*	
Indians, and its individual	*	94-CV-4217
members, and Darrell E. Drapeau,	*	
individually, a member of the	*	COURT TRIAL
Yankton Sioux Tribe,	*	Pages 1-987
	*	
Plaintiffs,	*	(April 3-7, 1995)
-vs-	*	
Southern Missouri Waste	*	
Management District, a non-profit	*	
corporation,	*	
	*	
Defendant and	*	
Third-Party Plaintiff,	*	
	*	
-vs-	*	
State of South Dakota,	*	
	*	
Third-Party Defendant.	*	

BEFORE: The Honorable Lawrence L. Piersol
United States District Judge
For the District of South Dakota
Sioux Falls, South Dakota

APPEARANCES: Mr. James G. Abourezk
Mr. Robin Zephier
Mr. Michael Scarmon
Abourezk Law Offices
Rapid City, South Dakota
Attorneys for the Plaintiffs.

Mr. Kenneth W. Cotton
Wipf and Cotton
Wagner, South Dakota
Attorney for the Defendant and
Third-Party Plaintiff.

Mr. John Guhin
Deputy Attorney General

-and-

Ms. Roxanne Giedd
Ms. Diane Best
Assistant Attorneys General
Pierre, South Dakota
Attorneys for the Third-Party Defen-
dant.

PROCEEDINGS: The above-entitled matter came on
for trial on the 3rd day of April, 1995,
commencing at the hour of 1:00 p.m.
in the courtroom of the Federal Build-
ing, Sioux Falls, South Dakota.

* * *

Herbert Hoover Trial Testimony

[p. 16, ll. 1-9, 19-25]

Q For the record, would you please state your name and
your address.

A It's Herbert Theodore Hoover, and my address is 401
Sunset Drive in Beresford, South Dakota.

Q What is your occupation, Dr. Hoover?

A I'm a professor of history at the University of South
Dakota.

Q And how long have you been in that capacity?

A Approximately 27 years.

* * *

Q All right. And you say you've been teaching at USD
for how long? Was that 27 years or -

A Since 1967. I taught for two years in Texas prior to my
moving here.

Q All right. Do you have a particular specialty in your
field of history?

A Yes.

[p. 17, ll. 1-16, 19-25]

Q What is that specialty?

A My formal training was on history of the American
frontier with an interest in Indian history, but at that time
there was no interest like that offered by any university
in the country, and as a consequence I used that training
in frontier history to develop what I like to very carefully
define as a history of Indian/white relations. I'm not an
expert on tribal anthropology or on tribal history per se,
but on the history of Indian/white relations, and the
primary interest within that specialty is historic Sioux
country, which extends roughly from Madison, Wisconsin
to the Rocky Mountains and from northern Kansas to the
Canadian shield.

Q All right. Now, within that particular specialty, do
you have any kind of subspecialty?

A My subspecialty is the history of Indian/white rela-
tions in the Sioux federation of 14 tribes.

* * *

Q Have you studied the Yankton Sioux Tribe?

A Their history of Indian/white relations, in particular, more than 25 years.

Q That you've studied the Yankton Sioux Tribe?

A Yes.

Q All right. Now, can you tell us something about the - any books that you've written, your publications?

[p. 18]

A About the Yanktons or other things?

Q Well, give us an overview, and then we'll talk about Yanktons as well.

A Okay. Well, I have now to my credit I believe approximately 20 titles in book form.

Q Twenty Books?

A Yes. And somewhere in excess of 40 articles in book chapters.

Q All right. Now, specifically on the Yankton Sioux Tribe, how many books have you written?

A Well, I have one entitled The Yankton Sioux from Chelsea House.

Q Has that been published?

A Yes. That was published in 1988. That's specifically on the Yankton tribe. About the Yanktons I have also published a major article on the history of the tribe's claims against the United States, and more than once have published profiles for publication, most recently in Chelsea

House's - or, yeah, in the Chelsea House publication entitled Native America In The 20th Century. In other words, I've addressed the tribe specifically in several publications, and in addition the Yanktons play very substantially in the two-volume bibliography that came out a couple of years ago from the Greenwood Press in Connecticut.

Q All right. As a result of your interest in the Yankton [p. 19]

Sioux Tribe and that subspecialty, have you had occasion to spend time on the Yankton Sioux Reservation?

A Yes. I think so.

Q Can you give us an idea of how much time?

A Maybe the best way to come at this is to say that I - I decided very quickly when I moved to Vermillion to make the Yankton tribe and its reservation my model for several reasons. And as a consequence, I seriously doubt that I've missed any historical site on that reservation. There are a few sections that I haven't walked personally.

And that's a consequence of several things. One, of course, is the proximity of that reservation to my home. It's no more than an hour, an hour and ten minutes, to anyplace on the reservation. A second is that the tribe itself has the longest abiding and peaceful relationship with white people in all of Sioux country. And the third is that non-Indian relations with the Sioux tribes west of Minnesota really started with the Yankton reservation. That's the oldest uninterrupted agency in all of Sioux country, and because of that it becomes a model for almost any kind of study, agency development and land distribution, in missionary societies, and almost very

function of Indian/white relations the Yankton tribe has become a model. And the consequence is I have very frequently, in the presence of old-timers and some younger people, one in this courtroom from whom I've learned, have gone

[p. 20, ll. 1-4]

out to search for the sites and try to discover their meaning. I've been on 27 reservations in my life and worked for more than a few days, but on the Yankton reservation I've worked literally hundreds of days.

* * *

[p. 21, ll. 3-6]

* * *

Q My question was, Dr. Hoover, have you had occasion to interview tribal elders on the Yankton Sioux Reservation as a result of your extensive background on that reservation?

A Many, many times.

* * *

[p. 22, ll. 15-23]

* * *

Q To your knowledge, are there any other historians in the United States or anywhere else, for that matter, who have a specialty in the Yankton Sioux Tribe?

A Rather sadly, I say that I'm rather alone in the history profession. There are two anthropologists who spend quite a lot of time, but I know of no professional historian who has had more than a passing interest except for one

or two who have worked as researchers, but not as scholars who write or interpret the past in Sioux country.

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[p. 30, ll. 23-25]

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Q Now, Dr. Hoover, I'm going to ask you based on your background and your experience, your extensive study of the Yankton Sioux Tribe and your education, do you have an opinion

[p. 31, ll. 1-9]

As to whether the boundaries of the Yankton Sioux Reservation exist today as they were immediately after the 1858 treaty?

A I believe that's the case.

Q Well, you should say yes, and then we'll get -

A Yes. Okay. Yes. I believe that they do exist today as they existed as a consequence of the survey of the 1858 Treaty.

Q All right. And that is your opinion, correct?

A Yes.

Q All right. Upon what do you base that opinion?

* * *

[p. 32, ll. 3-16]

* * *

Q Now, would you tell us on what you base that opinion?

A The basis for the opinion is research, and here I want to be very careful to say that I excluded case law history from this and the question that Mr. Guhin is raising because I am not an attorney and I'm not an expert in those fields. My primary focus has been on Interior Department records, Record Group 75 in the National Archive System, in legislative records, those pertaining to congressional acts, in some cases land history, forest history, mission records, oral histories, and as is expressed through publications on bibliography abundant literature, and out of that I've got to say that I have never seen a shred of evidence to say, the legal interpretation aside, that this boundary has ever been diminished.

* * *

[p. 34]

Q Would you describe what this is?

A From work on legal claims against the United States, I learned that an aboriginal claim is one that can be proven in printed records to have existed for a century or more prior to any settlement on that - on that claim.

Q And what is a recognized claim?

A A recognized claim, on the other hand, is a claim recognized by the United States government.

Q All right. Does the Yankton tribe have either an aboriginal or a recognized claim?

A In my opinion, it possesses both.

Q And describe how that came about?

A Can I do this historically?

Q That's what we're asking, yes.

A Okay. If you go back as far as the records go, the printed records go, you can find evidence that the Yanktons as they were approached by white people controlled the area between the upper Des Moines River and the Missouri. It goes back farther than any other tribe in a specific sense that Pierre LeSueur, Pierre Charles LeSueur, that's L-E-S-U-E-U-R, identified a Yankton encampment at the Pipestone reservation as we know it today, or the Pipestone National Monument. That would be back to 1700. Subsequent records indicate again and again that Yanktons controlled this area. When you finally get down to the records left by Steven Long in 1820 and 1823, he's very

[p. 35]

specific about that. So there's little question that this region which comprised more than 13 million acres belonged to the Yankton tribe as far back as we can imagine.

Q That would be an example of an aboriginal claim?

A That's aboriginal, and that claim has never been officially surrendered.

Q Describe what you mean by that.

A When the treaty came in 1858, as I read it and as the documents speak to me and as I wrote it in the claim article, the federal government asked the Yankton tribe

twice to seed large blocks of land. The first time was in 1830 when the tribe relinquished 2.2 million acres, and that was on the eastern perimeter between the Big Sioux and the Des Moines River, and then again in 1858 when the tribe was asked to surrender somewhere in the neighborhood of 11 million, and that would be the southern quadrant of Old Dakota Territory or East River, South Dakota in the main. And a part of that treaty, the Yankton retained – the Yanktons retained two parcels of land, one estimated at 400,000 acres, its current reservation along the Missouri River, and the other the Pipestone reserve. And by doing that transaction, my reading of it is that the tribe never relinquished its aboriginal claim in either case, but –

Q Do you know of any – do you know of anything that would indicate that the aboriginal claim was adjudicated lost by the

[p. 36]

tribe or taken away from the tribe?

A I have never – I couldn't find any evidence of that, and I talked to the claims attorneys in the firm of Wilkinson, Cragun and Barker in Washington, D.C. about that before I went to press, and I could find no evidence that that aboriginal claim had been relinquished, but that the federal government had added this recognized claim through treaty.

Q So I wonder if you would give us a brief background of the circumstances which led up to the 1858 treaty then, very briefly?

A Very briefly, the tribe was under enormous pressure for several reasons. One was that the fur trade had

severely diminished the availability of food and supplies over all the Sioux country. The second was that there was a period of drought and shortage through the 1850s. It got much worse in the 1860s. The third was the pressure of settlement by white people, and yet another would be pressure from business interest, J.B.S. Todd, for example. And finally, a decision within the council of chiefs and head men who were I'm sure more diplomatically skilled and seasoned than that of any other tribe in Sioux country made the decision it would be better to make the cession than to fight.

Q And what gave the Yankton leadership the diplomatic experience that other tribes did not have?

A Because they had been on the front line of contact with

[p. 37, ll. 1-5]

white people all along, any white people who were approached across northern Iowa or up the Missouri River. Their first official diplomatic action came when Lewis and Clark showed up under Thomas Jefferson's order, and their first official treaty was in 1815 at Portage des Sioux near St. Louis.

* * *

[p. 38, ll. 1-12]

Q All right. Dr. Hoover, I've got a map on display here, which is Plaintiffs' Exhibit Number 67, would you once again identify what that is?

A Just overall?

Q I'm going to hand you the exhibit description, Exhibit 67.

A 67 is an 1858 map of the Yankton Sioux Tribe Reservation.

Q Is that – do you agree with that description?

A In every way except that it excludes the Pipestone area, otherwise this would be fairly accurate (indicating).

Q Do you have an idea of the approximate time when that map was created?

A It had to be created between 1851 and 1859.

* * *

[p. 39, ll. 22-25]

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Q Okay. Thank you, Doctor. Now, I think that you testified that the impetus for the sale in 1858 which brought about the 1858 treaty was the U.S. Government?

A Yes.

[p. 40]

Q And commercial interests who were pushing the government? A That's true.

Q When you've – you've read the 1858 treaty, I take it?

A Yes.

Q All right. Now, in the 1858 treaty, just describe what kind of a new reservation was provided for in that treaty for the Yanktons.

A Could you be –

Q How many acres, where was it?

A Oh, okay. The treaty envisioned 400,000 acres, and as we know, it turned out to be slightly larger than that, and it ran between Choteau Creek and the Missouri River.

Q And how do you know that?

A Because it's described in the treaty.

Q And it's set out very clearly in the treaty, the description of the new reservation?

A Everything except the northern perimeter, which was erroneously I think defined by the first survey in 1859, but it's very clear about where the reservation is going to be.

Q It was erroneously surveyed. What happened to that erroneous survey? Was it corrected?

A Yes, it was. It was corrected at the time of the surplus land sale agreement and shifted upward as a consequence.

Q And that included 30,000 more acres then when it was shifted upward?

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A Yes.

Q Now, I think you testified that the Yanktons never surrendered their aboriginal claim over that 400,000 acres?

A That's my view.

Q Do you know of any contrary view at all?

A I've not been able to find one.

Q All right. So, after the Yanktons were limited then to 400,000 acres, after they sold the 11 million acres, tell us

then what happened after that treaty of 1858 was drawn and agreed to. What happened to the Yanktons then?

A In – in what sense?

Q Well, leading up the 1892 agreement.

A Okay. Are we talking about background for the agreement or the condition of the tribe?

Q Which would include the condition of the tribe.

A Yes.

Q Background of the agreement which would include the condition of the tribe, yes.

A Well, I've got to come at this from several different directions. Maybe we could start with the fact that mother nature was not kind. If you look back in the history of this region, you'd discover that we have cycles of drought interspersed with heavy rainfall and excess. And when this happens, you can suffer at either extreme, and that was probably the toughest period. And I make reference to

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An article I published on the history of ice jamming and flooding as evidence of this, that when the Yanktons moved on, they – the 1850s were fairly dry, but then they hit a real dry cycle in the 1860s. The 18 – the years 1865, '66 and '67 were years of grasshopper plague, and anyone who grew up in this area would understand that you get grasshoppers when you have extreme drought. They can't hatch when you have heavy rainfall. So that's a kind of a trigger to – to recognition, and they were all but paralyzed by this.

Then the rains came back in 1868 and kind of held tough until about 1872, and then we got another period, and by that time white people were being devastated as well, and that drought period lasted roughly from 1873 until, oh, 1877 or so. Then next we got the great flood of 1881 which wiped out the homes of the tribe. And then we went into a dryer cycle except for the great blizzard of 1888, and then another drought settled in in 1892, which was the very year that they began to negotiate for the land deal. So, as far as natural developments are concerned, I know of no period in the history of this region that was any worse than that.

The second was that they had an early run of bad luck with agents. The first agent, Alexander Redfield, was a former upper Missouri agent and I believe an honorable person. He has been somewhat maligned by other historians, but I think he was dutiful, and he was around for only two years. But in his

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place – Abraham Lincoln replaced him, because there was a fellow from Pennsylvania who was critical to the election of Abraham Lincoln to the presidency, and he knew it, and because of that obligation, that honest president gave us two people from Pennsylvania. One of them was named Walter Burleigh, who was a physician, and the other was Andrew Faulk, his father-in-law. And a consequence of that was the "Indian Ring" at Greenwood has made textbooks nationwide that search for prototypes of crooked Indian agents. He was investigated twice by the United States Senate and removed. In my opinion, the only other agent that came close was another physician named Henry Livingston, who was in charge of Crow

Creek and Lower Brule during 1870s. Subsequent to that, the Yanktons had a little better luck, but that was terrible shock in the beginning, a lot of physical loss and a lot of emotional shock.

Then the third thing that happened, which is, of course, partly at issue in this trial, was the coming of the Minnesota Sioux War and the disposition of Yankton people not to get involved. In fact, the Yankton tribe decided to take the route of peace officially. At least 30 Yanktons as individuals participated in the war, but on the other side we have evidence of 51 members of the Yankton tribe signed on as soldiers in the United States Army. There is evidence in records that the Yankton Sioux scouts that entered under General Sully with Walter Burleigh as their surrogate commander

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represented the first segregated Native American unit ever to join the United States Army. And the last one was disbanded in 1946. It started a whole new trend in military developments. That – that unit gained a lot of attention out in that region, and the tribe suffered an awful lot of anguish within. Some members were so angry with Struck By The Ree that they actually killed his cattle and horses and tore up his tent and fired blank cartridges in his face. The turmoil that went on within the tribe is very hard to describe. Then, in addition, the tribe, of course, had to face the great Sioux War and again stood aloof. This is a period of great distress.

Then finally there was pressure by the federal government for this tribe to get about the negotiation of land. The first thing that happened was a survey followed by another and yet another, three surveys, that laid out on

communal property rectangular lots abutting against the Missouri River full length. I've seen that map in Washington. It starts at Choteau Creek, and it runs all the way to the upper end. These were set aside on communal property for families, and the families occupied them and began to farm.

In 1870, this is the earliest record that I can find, and it's included in the Annual Report of the Commissioner of Indian Affairs, a temporary agent, a soldier in the United States Army who was there temporarily made the suggestion that the tribe should sell all the rest of the land in a block to

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raise money to help support these family farms. And after that there's a kind of a blank, and I think it's in the records, and that's partly because of the coming of the great Sioux War and the Black Hills debacle.

But then subsequent to that after the Black Hills issue quieted down, federal officials began to talk about a land sale again, and during the 1880s there was considerable contention within the tribe about that. That resolves itself in the executive document we talked about where federal officials identified three general forces within the tribe; one that favored sale, one that was ambivalent, and the one that was decidedly against. When those three forces lined up, they were playing against more than 20 years of antagonism regarding this issue. They had been gnawing on that issue for twenty years.

Q On the sale of land issue?

A On the sale of land issue, by the time Congress approved it. So it's hard to make a comparative statement

because there are other tribes that are having trouble, too, but it's difficult to imagine a greater combination of factors as far as distress is concerned and over a long period of time, because this was the oldest permanent agency in all of Sioux country.

Q Was there a time, Dr. Hoover, when the federal government adopted a policy of allotting individual tracts of land to members of the Yankton tribe?

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A You have to be careful of terminology. What had been placed on the rectangular plots should be regarded as land assignments on communal land, and that policy -

Q Let me stop you right there. Land assignments on communal land?

A Yes.

Q In other words, assignments, but not allotments?

A Okay. When I say land assignment, it can go two ways. It can either be to communal land that belongs to the tribe, or during the same period, the Congress of the United States provided for land assignments for the Dakotas, the Minnesota Sioux, on government reservations. What that meant was the land would not belong to you as an individual, but will belong to some other political entity, and you may use it as long as you use it well. That's an assignment. The idea of the land allotment, of course, came with the Dawes General Allotment Act of 1887.

Q Tell us what that was, briefly.

A That was a law that consolidated a lot previous ideas regarding the transformation of Native Americans into

family farmers with a goal of ultimately having fee simple to land and - and engaging in I guess you could say agricultural capitalism like the immigrants who settled, the Czechs and the Norwegians and the Dutch and all the rest.

Q Now, this was an allotment, we're talking about allotments

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now, not assignments?

A Yes.

Q In 1889 there was a law passed that allotted - that would require allotments to individual Indians?

A That's when - when the allotting agent first came out to address this issue from the 1887 law to the Yankton tribe.

Q All right. Now, the land to be allotted, who owned that land?

A The land to be allotted, of course, belonged to the tribe.

Q And that was the 400,000 acres -

A Yes.

Q - approximately. So what the government did, in effect, was tell the Indians that they could no longer own it communally and that they had to take a certain amount of land out of that 400,000 and settle on that, is that correct?

A Yes.

Q How many acres did the government offer to each Indian?

A Okay. If I can look back a little bit from that period. When this first discussion – this was first discussed with tribal members, there was quite a violent reaction to it and – and the Yanktons had suggested that a family farm should be as great as 380 acres. And if you took 1900 or 2,000 people times 480 acres, that would be the engulfment of practically an entire reservation. But the Dawes Act played in different ways. On Yankton tribe it was to come out on or about 160

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Acres, a quarter section.

Q Per – per –

A Per individual, man, woman and child.

Q Per each – even children were getting –

A Yes.

Q – one hundred sixty acres.

A And it should be a matter of record here, and this is why I brought out the land assignment, that when the allotting agent got out there, you might recall from reading, those of you who have read the records, that there was a threat of violence and a need to call troops down from Fort Randall to quiet things down.

Q What was that violence about?

A It was about this very issue, about replacing the adjustment to assignments, the thought of going on to individual plots of land and then the prospect of possibly

selling land beyond that in surplus. And the consequence was that particular groups, and one that came out during the – the writing of the 1894 documents was the one that the tribes would have translated Feather Necklace, but which white people translated Feather In His Ear. People who surrounded him and several other leaders said that we'll not tolerate this, and there was a severe threat of violence. Part of that was that there wasn't room to allot all of these people, 18, 1900 people, and that varied from year to year along the Missouri

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River where the assignments had been. So somebody was going to get elbowed out and thrown up on top. The upshot was –

Q Wait a minute. What do you mean "up on top"?

A Up beyond the Missouri hills, up on the flat land, the prairie, where up to that point there were very few Yanktons settled at all. The consequence was and the only place that I know of in Sioux country with the Yankton tribe they had divided allotments. And if you look at the first allotment coming in across Choteau Creek, it belongs to the Stinger family. Still there. You can see where the buildings were, but obviously there wasn't enough land for the family. So they put farmland up on the top and began to divide them, and that negotiation took quite a long time. As you recall, there were two processes of allotments before they finally got it settled down, because there were understandable claims of preemption to particular sites along the Missouri River. And the – the tribe knew about the threat of flood plaining, of course, of the floods, but nevertheless the Missouri valley was the best place to settle from the tribal point of view.

Q All right. So once the land was allotted, tell us how many acres were allotted in total, if you can remember.

A The reason that that's blurry, of course, is allotment didn't stop in 1894, and I – you know, 160 some thousand acres that – I just don't recall the particular –

Q That's close enough.

[p. 50]

A I'm not quite sure.

Q In that vicinity, is that right?

A Yeah. And then there was a thought that they would have to have another 60 or 70,000 to accommodate additional allotments, and theoretically allotment could go on until 1934.

Q So that would leave about 235, 240,000 left over that was unallotted?

A Yes. Yes.

Q And your testimony is that the Indians wanted all of it allotted, but the government would not do so?

A That was their initial plea, yes.

Q All right. Now, what happened to the land that was not allotted?

A Some of it, according to this agreement, would be set aside for special purposes.

Q For example.

A One purpose was, of course, federally controlled administrative districts, and at that time that was the so-called mile square government reservation, which is

really only slightly in excess of 300 acres, and founded the very year the 80 some acre Farm District Number 2 at Lake Andes where, of course, the housing settlement and the chemical control center and all are today. Secondly, there was provision for missionaries who had been at work, not only because of their churches, but also because of their schools, and there was

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provision that they would be able to acquire their – their titles.

Q Their land titles?

A Yes, land titles from the tribe by purchase.

Q Weren't the missionaries also instrumental in convincing tribal leaders to sell the land later on?

A I think some of them were, and some of them were fairly silent. It's my opinion that John P. Williams and – probably applied very little pressure. I think that Joseph Cook did apply quite a lot of pressure. If you read his diary, you get this sense, and I've read it, but they – they should be maligned, because they believed this was the right thing to do. Most of the do-gooders at that time felt that the only hope for the tribe was in family farming, but overall I think that your supposition is probably correct that there was pressure to try to sell the land.

A All right. With regard to the sale of the 100 – what did we say, 140,000?

A Or more.

Q Or more.

A I would have to go back and get the statistics. I don't carry those in my head.

Q Well, the numbers are there, so we don't really need to - to be precise right now.

A Sure.

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Q But, what kind of pressure then came upon the Indian tribe, the Yankton tribe, to sell the unallotted lands to the government?

A Several types.

Q Could you describe what those are?

A Yes. I think in - in reading the documentation for the 1894 agreement alone, you can identify several levels of pressure on the tribe, and in that document the - I believe the acting commissioner had written to acknowledge the charge of fraud about this land sale. So - so the federal officials back in Washington are very nervous about what was going on out there.

One level of - of pressure that is rather subtle in the documentation, but was real, was - was availability of jobs. In order to get a government job, if you were a tribal member, you had to look like an accommodationist. You had to cut your hair, wear blue jeans and keep the weeds out of your corn, and if you did, then you were a prime candidate. And if you read the Interior Department records for very long, you can find plenty of documentation about this, that the dancing gangs, they called them, just didn't get jobs down at the agency.

THE COURT: Called them what?

A The dancing gang. Those who - and I'm not being judgmental here about what they did - those who did cut their

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hair and accommodate tended to get jobs. There is mention on one of these, a tribal policeman named Omaha who was front and center in voicing his opinion early on in favor. I have no idea how he felt, but I think that his proclamation in favor originally would have been in the preservation of his job on the police force, which was a pretty good job and hard to come by. There were not - there were only at that time eight policemen and a lot of people who would have applied for the work. That was one level of pressure.

A Another was a rumor as best I can find - nobody published a document to say - but a rumor that people believed that if they didn't sell the surplus land, the government of the United States was going to cut off their annuities.

Q They were getting annuities from where, now?

A From the 1851 Treaty, and more than that, the 1858 Treaty.

Q What did they consist of, the annuities?

A The annuities were complex. They from time to time would include some cash payment under distress, but in the main the annuities included, first of all, guns and amunitions [sic] for the Yanktons, because they were not considered to be a threat and the federal government for

a long time supported hunting and gathering, and then included the issue of clothing, most of which didn't fit, you know, you had two sizes of clothing and a lot of different sizes of people, but they were allowed to draw clothing, and then just a very large variety of food and - and

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domestic products, coffee beans, currants, flour, salt pork, which the Yanktons didn't like very well, things like that, and then household items that the women wanted, cooking pots, that sort of thing. And I get the feeling that the tribe had something to say about the order list, you know, they would talk to the agent and say, we'd like to have more of this, and it was the agent's job to decide every year what it would be. And then most of all fresh meat. Every two weeks, by some of the issue records, every person on the reservation got four pounds of meat.

So the - the annuities were material more than they were monetary, and they came primarily from the 1858 land sale, but somewhat from the 1851 Fort Laramie Treaty as well, and the threat now that they were going to cut off annuities had some plausibility, because the eastern tribes, Eastern Sioux, had lost all of their annuities as a result of the Minnesota Sioux War, and the Lakotas had had their annuities cut off as well because of Sitting Bull's war.

So there was a belief in the tribe that it's plausible the government might shut these down if we resist, because the resistance had led to the loss of annuities in the past. And one should not have the opinion that tribal members didn't communicate with each other, because Yanktons

ran a lot with government support to hunt west of the Missouri River. So it's my opinion that the Yanktons would have believed that the

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government might cut off the annuities, and that would have been disastrous.

Q Well, the annuities were promised to the tribe in exchange for their peaceful intentions for giving up land, et cetera -

A Yes, and -

Q - is that correct?

A - and by increments over 50 years.

Q And so they were - this was not a gift to them, this is something they were entitled to by treaty?

A Yes.

Q But nevertheless they were - you believe they were threatened with the loss of annuities?

A They believed - I believe that they believed that they were threatened by the loss of the annuities. Another thing that came up in the agreement, of course, was the veterans' benefit, I like to say, because these are members of the United States Army under General Sully.

Q You're talking about the Yankton scouts?

A And here we're talking about 51 scouts who had never been wholly paid, and I think they felt like most combat veterans, when they get back, they wanted their veterans' benefit. They had received some as the document indicates, in 1878, but they hadn't got the full

amount and were angry about that, and were assured that if they supported the land sale agreement and it went through that they would receive their benefit, and indeed

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they did.

And then finally, and I think when bribery was brought up, the officials must have had in mind the payment of the 20 dollar gold piece. Now, I've read that two ways. One was that you would get a 20 dollar gold piece if you actually signed the document, and another way was if you are an adult male, you get a 20 dollar gold piece if a majority signs. In the end it didn't matter, because we got 55.5 percent signing, and so they paid out gold pieces to the adult males.

Q Can you talk a little bit about the opposition to the sale of the unallotted lands within the tribe?

A If you just read the documentation, it seems like bedlam, but I think the officials got their finger on it when they talked about three different factions. There was one that was pretty much what some of the soldiers used to call hang-around-the-fort Indians. There were people who felt we might as well accommodate, and they were trying to do their best in that fashion; then there was a larger group that was ambivalent; and then there was a hard-line group that just wasn't going to play this game at all. I think that something ought to be brought out here, because it's real in that period. We shouldn't overlook the fact that the federal government was able to diffuse and dissolve the chiefs council by the time of this sale.

Q What was the chiefs council?

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A The chiefs council was the traditional leadership group within the tribe, and I have described in documents that have been entered here how the federal government went about that, not to try to fire the chiefs, but to diminish the number who were traditionalists to a point where they would succumb to the replacement of the chiefs council with a different kind of government, and that kind of government came into place on the 4th of July in 1892 called the speaking council.

THE COURT: The which council?

A The speaking council, which was a congress of many people. So what they were doing is replacing the traditional tribal government with a written constitutional representative congress, and when they did that, they invited the seven chiefs to belong. And I sat down within the last couple of days, because I was very curious, and discovered that five of those chiefs who sat on that council were opposed to the land sale, which means that the elders or traditionalists in the main were opposed to the sale, and a lot of that had to do with the hardship of going through this whole political process and resentment there about -

Q I don't know what you mean by that.

A Okay. What I mean by that is that if you had watched your own traditional kind of government disintegrate through pressure from federal officials, and let's be kind to the federal officials and point out that they didn't throw anybody

[p. 58, ll. 1-13]

out of office, but gradually they replaced the traditionalists with people who would accommodate, and then after Struck by the Ree died -

Q Who would accommodate the federal government?

A The plan. And it was after Struck by the Ree died - and it's my opinion they didn't dare to make the move until he died in 1888 - that the federal government then began to make its move to establishment of a written constitutional representative government and then allotment and then land sale, and all of that came after the - I had ran across the other day a federal inspector said he was practically venerated in his tribe, and they simply didn't dare to do that as long as Ree was alive, in my opinion.

* * *

[p. 59, ll. 1-6, 11-25]

MR. ABOUREZK: Your Honor, at this time I would like to say that the agreement between the tribe and the United States Government was 1892, but it was ratified in 1894. So for purposes of convenience, can we just say the 1894 agreement, and we know it's referring to the 1892 as well as the ratification?

* * *

Q Doctor Hoover, with respect to the 1894 agreement, would you describe the conditions of sale and what led up to those conditions. For example, the price and how it was sold.

A Well, the pricing from the standpoint of tribal members, as a matter of public record it talked about wanting in the range of six dollars an acre.

Q Would you - would you tell us the difference between what they called appraisal and sale method and the direct sale method.

A Okay. When they got around to evaluating the price, there were two ways that the federal government acted. And one I like to think of as being the real estate appraiser where you would appraise land and the federal government would be responsible for its sale to each purchaser. And some of the sales were handled that way. The other way to go about it was

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to try to find a block sale price, and then the buyer, the government in this case, had to decide how you would reach an equitable agreement about price, including the swampland and the rough land that you could use for nothing, the breaks and the draws.

And I gather from the documentation that the federal officials involved were saying to the tribe, you are going to be better off if we buy the whole thing in block and pay a fixed price. And the consequence was the government bought the whole unit, good and bad or arable or non-arable land, in one unit for about, what, three dollars and 60 some cents an acre. That was not more than about maybe 55 percent of what the tribe had requested, but in fairness to the people and the government, this would not have been a very - that would not have been a bad price to have paid for land overall at that time in this region.

They are buying in the middle of the depression. And the land prices ranged from the government standard price of the 19th Century dollar and a quarter up to about ten dollars. And they were evaluating the land as buying quite a lot that was in the Missouri breaks, which would be grasslands to pastureland, and paying it - so much an acre for all acres, including the block sale.

Q That's the direct sale method?

A Yes.

Q What would be the appraisalment and sale method then?

[p. 61, ll. 1-14]

A Well, appraisalment and sale method would be to appraise each unit that you are going to sell at a different price, according to its productivity, and then sell that individual tract for a certain price.

Q Why did the government - if you know, why did the government insist on the direct sale method?

A Well, the government - in the face of it, the government is saying you are going to come out better this way. If you looked at the worst scenario, you are trying to say that the federal government is trying to get as much land as possible, as quickly as possible, and open it up for immigrants who are pounding on the door to get in.

Q There was pressure from white settlers -

A There was a lot of pressure from whites.

* * *

[p. 62]

Q So they eventually settled on which method?

A They settled on the block sale or the standard price for all.

Q That method then was included in the 1894 agreement?

A Yes. You were asking about pressure.

Q Yes, correct. Now, in the 1894 agreement, were there any new boundaries drawn as there were in the 1858 agreement?

A No new boundaries. They were assuming the boundaries would say [sic] as they were in 1858. And that was, in my opinion, written into this agreement; that the treaty would not be violated, but I do remember that in the survey, the northern boundary was angled upward to include more land.

Q To include more land for the Indian tribe?

A Yes. So it actually enlarged the reservation in that sense.

Q Well, this is a - this is a critical area now, Doctor Hoover. In the 1858 agreement, there were new boundaries drawn, is that a fair statement?

A There were boundaries drawn around the land retained by the tribe for itself.

Q And that was a clearly agreed upon diminishment of the reservation as it existed prior to the 1858 treaty?

A Well, you could put it that way, or the way I thought of it is that the tribe relinquished its aboriginal claim to everything except the two reservations it retained.

[p. 63]

Q Of the 400,000 acres plus Pipestone?

A Right.

Q In the 1894 agreement did the tribe relinquish anything except in a land sale context? Did they relinquish the reservation?

A My view of it is that they relinquished neither the aboriginal nor the recognized claim.

Q And -

A So anything -

Q Do you know of anything -

A Go ahead.

Q Do you have any document, any - sorry. Do you know of any document anywhere that would say to the contrary?

A I have not encountered one which, in my way of interpreting it, that would say to the contrary.

Q You said it was written in the 1894 agreement. Which part of it was written? Where was that written?

A Where was which? The -

Q That they retained their - they wanted to retain the 1859 Treaty.

A Well, it was written as Article XVIII.

Q And do you have that in front of you?

A Yes.

Q Would you read that article in the record, into the record, please.

[p. 64]

A "Nothing in this agreement shall be construed to abrogate the Treaty of April 19th, 1858 between the Yankton tribe of Sioux Indians and the United States. And after the signing of this agreement and its ratification by Congress, all provisions of the said Treaty of April 19th 1858 shall be in full force and effect, the same as though this agreement had not been made. And the said Yankton shall continue to receive their annuities under the said Treaty of April 19th, 1858," end of quote.

Q That's the extent of Article XVIII?

A Yes.

Q All right. Now, would you explain your interpretation of Article XVIII.

A My interpretation of it is that the tribe had given up certain things here by the 1894 agreement. They had, first of all, given up a land mass in return for some cash to support themselves. And, secondly, they had given up the - the isolation from neighbors other than themselves. They were asking to come in among them in unknown quantities of Czechs and Dutch and Scandinavians.

Q In fact, if I might stop you there, was not that part of the incentive that the negotiators for the government offered to the tribe during the negotiations?

A Of getting white neighbors?

Q Yes.

[p. 65]

A Yes. This was the part -

Q And didn't they tell them that land would be valuable if they had white neighbors?

A The land would be more valuable, and you will be more successful farming if you have white neighbors to emulate.

Q Okay. Please continue.

A And so - and this was - this notion that we just talked about, of the value of selling land on reservations by tribes to immigrant white, was something that pervaded not necessarily enemies of Indians, but the friends of the Indians. The Indian Rights Association, for example. This was the mood of the whole country. So they were using that as incentive. The tribe was giving up land, the tribe was giving up its own isolation which would be a defense of its own culture, and fully understood that, but wanted to make sure that it wasn't going to give up something else.

There are two things that come out in the agreement that suggest that there are things bothering tribal members and tribal leaders, and one of them was annuities which we already covered here in the courtroom. There

was deep concern, for good reasons, that the annuities might be cut off if they didn't sign the agreement. That was fairly important. And the other, of course, was in a different article, the whiskey issue, which was a big problem across Sioux country. And to me they are trying to assure people in the Yankton tribe that you

[p. 66, ll. 1-3, 13-25]

are giving up these things that we can define, but you are not giving up anything else, including your boundary, in my opinion.

* * *

Q All right. Professor Hoover, tell me the difference between the 1858 Treaty and the 1894 agreement with respect to retention of land, et cetera.

A The 1858 Treaty defined boundaries for the reservation that the tribe wanted to retain for itself.

Q For a new reservation?

A Yes. Or I should say diminished because they were giving up land beyond the boundaries. And this article is saying that nothing in this agreement shall be construed to abrogate the Treaty of April 19th, 1858. In then a historical sense, I would have difficulty understanding why a professional historian would not take that to include the boundaries as they -

[p. 67]

Q But as you said, there were no boundaries drawn in the 1895 agreement, were there?

A No, as far as I could tell, there weren't.

Q All right. Now, I'm going to ask you about the - what you understand to be the contemporary understanding of the various parties at the time of the negotiation of the 1894 agreement. Would you describe, if you know, the contemporary understanding of treaty negotiators who represented the administration.

A Well, obviously they were very nervous because there were two - there were - there were really two investigations of this whole issue. And the correspondence surrounding that, some of which comes out in these documents and a considerable amount which also exists in the letters received by the Office of Indian Affairs, would indicate that there is a lot of ambivalence about it. And in this documentation which is entered as Exhibit Plaintiff Number 5, you have a statement that there is a charge of fraud, that people out there don't believe that we are playing a fair game here of negotiations.

So I think it's fair to say that - that the administrators are very deeply concerned. And I have to paraphrase, I can't quote from memory, but I remember that at some point in this documentation, says the federal official, that we are going to proceed with this nevertheless as though people were demanding that we buy their land, that there be a

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land sale. They were going to buy it.

They also make very clear here that the tribe was subdivided over the issue. And as I said earlier, you can account for five of the seven chiefs in the new speaking council who are either against it or very ambivalent.

There are only two of them who spoke out in favor of it. The group around Feather in His Ear never said that it would accommodate this. And in the end we had approximately 55.5 percent of the family heads, which would be adult males making an agreement, meaning that we had 44.5 percent against.

Q Well, in terms of Indian attention to all of the boundaries, do you know what the contemporary understanding of treaty negotiators were at the time?

A Of what they were doing in 1890 -

Q '92, when they were negotiating.

A '92. When they were negotiating, they were simply trying to buy as much surplus land as possible after the initial allotment process, first of all, to generate funds for the - for the tribe in fairness to the federal officials. But on the other hand, I don't believe that we should fail to notice that several things happened in 1894 almost simultaneously. The completion of this agreement was one. The opening of the Lake Andes farm station was another, but the founding of Ellis Island was a third. The United States -

Q What was that last one?

[p. 69]

A Of Ellis Island. The United States is coming very close now to a time when it is taking on approximately a million immigrants a year, and the arrival of that flood of immigrants had an impact on Indian negotiations in the west. You have to look to a broader picture. But the pressure to open land right at that time was very critical all across the arable west. And we have documentation to

show that Senator Pettigrew was among those who was applying pressure to try to get this done.

Q Well, do you know of any – any documents that would indicate that the negotiators wanted to diminish or disestablish the size of the reservation when they negotiated this agreement?

A I have no inclination of that myself.

Q Have you ever seen any documents?

A No. I have not seen any documents to say that.

Q Have you heard of any?

A No.

Q All right. Now, with respect to Congress, at the time –

A Let me qualify and say that –

Q Yes.

A – if we are over into the legal definition where I claim no expertise, I have heard an argument from Mr. Guhin, but – it would be unfair for me to say that I haven't heard an argument, but in looking at the records from the perspective of a professional historian, I found not one shred of evidence.

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Q All right. Now, with respect to Congress at the time of the passage of the ratification of the 1892 agreement in 1894, have you seen any evidence of documents contemporary at that time that there was any intent to alter the boundaries by Congress?

A Not by Congress. Not by the federal administration.

Q And Article XVIII was included in the ratification by Congress?

A Yes. Congress – this is a congressional document, not simply an administrative policy statement.

Q All right. Now, do you know of – what might be the contemporary understanding of the Yankton Sioux Tribe at the time they negotiated this agreement in 1892?

A It seems to me that that is pretty clear because of the statement about the treaty, that nothing else would be changed. And also I think that they – the whiskey issue was a pretty substantial one and federal administrators recognized that, that this tribe was afraid, and had very just cause to be afraid of the whiskey issue.

Q Describe that a little more in detail, please.

A Okay. On my curriculum vitae you will discover last summer I became the primary author of the History of Bon Homme County, Next Door. And with Sunshyn Thaler from Avon, I authored a piece on the Bon Homme Tackett Station.

Q The what station?

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A Tackett. That is T-a-c-k-e-t-t. He was sheriff and – excuse me, Your Honor – a hanging judge at that place. And –

THE COURT: Mere figure of speech.

A And this was known at one point in the late 19th Century as the Honolulu Ranch. There was a steamboat

landing about 1.4 miles down the creek, an estuary of Stone Creek where the steamboats pulled in and brought up cargo because it was a station for the stage coaches and the wagons on the Fort – on the Fort Randall Trail. But it was also a place where ladies of the night, if I can put it that way, stopped by in cycles of about two weeks at a time. And on the second floor, there were very small rooms with numbers on the door. When you checked in, you could go up and gamble, and then accommodate one of the prostitutes. This is very well-known and documented.

Q You don't have to be defensive about it.

A In addition, in the front – and I almost broke a leg on this one. The hotel burned down about two years ago, and I was running around trying to get a proper angle with my camera, and suddenly the ground gave way beneath me and I fell about six or seven feet and began to injure a knee that has been a problem ever since. And as I shook myself off – I was with a tribal member. He began to chuckle. He said feel around the darkness, and I did. So I found a tunnel that went into the basement of the hotel. This was a whiskey cache. Very few –

Q Can you give us a description of the – I mean how do we

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find it?

A Okay. How do you – well, Tackett Station is right across the bridge on the low road out of the reservation off to your right under some tall trees. And I knew a number of elders down there, whom I talked to, and they

said that it was well known that it was true, that into the 20th Century you could buy booze there. That's station number one.

Number two, across – directly across from Greenwood in the Missouri hills there was a well-known whiskey cache where the steamboats landed. This is recorded by the agents. And they had to smoke that out. The third is the Schmoll farm. The sign has gone down, but if you drove onto the reservation on the low road maybe four, five miles, there used to be a mailbox that says Schmoll, S-c-h-m-o-l-l.

And I stopped there one time with a tribal elder. We drove up on the hill and found somebody who looked like he would have played Tobacco Road in Hollywood. He was a wonderful guy who was well known for having been kind to Indians. And as we looked down the draw, he and my companion, Joe Rock Boy, began to laugh. And he said, Joe, when you were a youngster, I sold you a lot of rye whiskey here. That was a well-known whiskey cache.

And then there was still another just west of Marty. When you drive to Seven Mile Creek, there is a farmstead right on the top of the bluffs. And I'm not going to bring up the name

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of the family, but it was pretty well-known that you could buy liquor there. The booze traffic was a very big problem. And in addition, those allotments butted against the Missouri River.

So the tribe – this should be taken as – as historical background. This tribe is having a real hard time with that. And it wasn't just the fear of child neglect or wife beating. It was the fact that people who got inebriated would trade in their plows, you see; that the farm business would diminish because of that.

So when I read that piece the first time, I thought this – they are very serious about that. Why else would you bother to write into this and then –

Q Into the 1894 agreement?

A Yes. And then again mention this in the land opening, that we don't want alcoholic beverages sold anywhere within our reservation, which is a declaration of the tribe's beliefs that there was a reservation with boundaries. It says specifically that it won't be sold either on the land sold to white people or on the land retained by Indians.

Q Well, wasn't the sale of alcohol illegal in Indian country at that time?

A From 1832 until 1953, anyplace in Indian country.

Q Why would then the tribe need another section in there prohibiting the sale of alcohol if indeed there already was a

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prohibition?

A Because the people who were selling whiskey really didn't care about that. The stakes are pretty high financially. I have, as you know, published an article that

shows up on my curriculum vitae on the history of the whiskey traffic in Sioux country. This was a very, very lucrative business because you are selling not only whiskey; you are also trafficking in the machines to gamble, and you were carrying prostitutes.

Q Did the Congress in fact codify that section into a criminal prohibition later on?

A You are talking about the section on –

Q Article XVII, the alcohol prohibition.

A Yeah.

Q If you know. If you don't know –

A Yeah. I'm – that is a legal issue that I better not answer.

Q Okay. So the – do you know of any understanding on the part of the tribe, contemporary understanding that the reservation boundaries were to be diminished?

A None to my knowledge.

Q And do you know their understanding whether they would be the same, they would remain the same, untouched?

A They would have to assume that except for the survey we talked about, which actually enlarged it by 30,000 acres or so.

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Q All right. Now, you talked earlier about the Lake Andes farm station. Would you tell us when that was formed, what it was about, et cetera?

A We talked about the Mile Square which was the government reservation, as they called it, which was part of the reservation that belonged to the tribe, but was used by the federal government to manufacture the agency of Greenwood. And Greenwood at one time became a small city as a consequence. But on the year of the land sale, in 1894, the agency, with approval from the Commissioner of Indian Affairs, opened Farm Station Number 2. And that draws me into the system of the acculturation. And I have to go into that.

Q What year was Farm Station Number 2 established?

A In 1894. In 1894.

Q I think if you can look at that, you might find it was in 1895.

A The farm station?

Q Yeah. Well, anyhow, I think it's in the documents, so go ahead.

A Well, I would be glad to look it up, but I wrote an article on this.

Q You may not have to look it up.

A Okay. I believe in fact that I could, if I went back to my materials, I could give you the date in 1894 when this was set

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aside officially. But, that's a pretty small point. The reason this is so well documented is that the federal government is trying to install a help system for adaption to agricultural. On this reservation in 1861, the agent

appointed a person called the U.S. farmer whose job it was to not only help people learn how to do family farming, as opposed to casual farming, but also to simply accommodate to the lifestyle and the acceptance of family farming as a way of life. And this happened in all the Indian agencies in the country.

And I believe the year was 1881 when someone wrote back to the Commissioner of Indian Affairs and said that we need some additional help out here with the farmers, and so the government, with its imagination, created a second office called the additional farmer. And then people called for assistance, and so they added the assistant farmer. Before they were done, they had six categories of people which I believe was by far the largest bureaucratic network in the Indian service.

It had several jobs to do. First of all, to help people make the adaptation. Secondly, to accommodate to a non-Indian lifestyle. And a third – and I had included a map of the original placement of the bands in this tribe, thinking we might want to make this point. They also tried to divide the traditional band structure with new farm districts. So the people in a single band would relate to different officers. It

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was a difference of sociological realignment. And in order to get this done to accommodate this system of farmers – and they had, as I remember, about ten for a time – they had to have a second farm station to make that work.

This also indicates that the federal government intended that there should be considerable agricultural

[sic] activity on the upper end of the reservation, else they would have probably tried to run the whole thing out of Greenwood. And my imagination tells me that that Lake Andes farm station probably served people down to Seven Mile Creek. And that would have involved two different band structures, the one of White Swan and the one of Feather in his Ear.

Q Doctor Hoover, in any event, if the government established a farm station two years after the negotiation of the agreement selling the unallotted lands, does that tell you anything about the government's intention with respect to the boundaries?

A I want to go back and say that they founded this administrative district in '94, the year of the agreement. The reason I remember that so well was that Clarence Foreman talked to me about it and talked about the year of his birth. He was born in '92, and somehow they didn't allot him. And then he talked about how that allotment should have been given to him in 1894, and in lieu of that, later on. So all this came about simultaneously. And I have to believe that it was to assist people in their accommodation to agriculture.

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Q What does it tell you about the continuation of the reservation up in that area?

A Well, it tells me that the federal government assumed that it continued to exist, else there would have been no reason to create a farm station.

Q All right. Now, you talked about the one mile square reserve. Some people think that that was the reservation

boundaries after 1892, the one mile square. What can you tell us about that?

A Well, I was a little perplexed the first time I heard that word, too. I remember the first time I drove into Greenwood with an old timer, and he said we are now at Mile Square. And I said you mean 640 acres, and he said not quite. He said we all understand that Mile Square is the agency compound, and it was attached to a place that they kept elders for a long, long time. Nearly 75 years, small homes there. That was called Mile Square Elder Housing. That term applied specifically to the, what, 300 - I don't have the figure at hand, 360 some acres as I recall, that was taken I like to think on loan by the federal government to run an agency, but when finally all of this shut down, it was simply delivered back to the tribe.

Q Do you know what year the Mile Square was established?

A Well, Mile Square was established in 1859 because that is when the agency was set up there.

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Q Okay. So certainly it wouldn't have been involved in any diminishment at that point?

A Oh, no.

Q What year was the farm station shut down by the -

A In 1932 in anticipation of the Yankton being a sub-agency under Rosebud the following year.

Q Have you ever in your experience seen the Bureau of Indian Affairs install a farm station off of the reservation or outside of a reservation boundary?

A No.

Q What about the lake and - the lake itself, Lake Andes, how was that formed?

A The lake itself?

Q Yes.

A That was a natural lake.

Q Did there come a time when the government drilled wells to pump water in there?

A Yes.

Q Tell us about that.

A Well, I - the record is very indistinct about that, but it came shortly after the time, as I recall, when they established Farm Station 2, in a period of drought. We want to remember that there was drought and depression from 1893 to 1896 during this period. And I don't know about the timing of the drilling, I have got to say, because I could never find out for

[p. 80]

sure, but what they decided to do was to drive artesian wells, which they did to replenish the lake, to bring it back to normal state.

Q And was this done, do you know, after the 1894 agreement?

A My belief is it was done after, yes. If you will just give me a second, there is an exhibit in here about that.

Q Yeah. Look at Exhibit 24. Can you tell us what that exhibit says, Doctor Hoover, or just describe what it is?

A Well, the exhibit simply opens with "This reservation is badly in need of artesian [sic] wells." And they talk about the drought over the last six or seven years, and how the lake has dried up. This is October 29th, 1895.

Q 1895. All right. So the government was then doing work in what they believed to be the Yankton Sioux Reservation a year after the ratification of the agreement of sale of land, correct?

A Well, they do say specifically "This reservation is badly in need of artesian [sic] wells," yep. And they are trying to help out by bringing the lake back.

Q Have you ever known in your experience of the government drilling wells off a reservation?

A No. No, I don't. I'm not clear about Fort Peck. That is a long ways away, but there was other well drilling within South Dakota, and none off the reservation to my knowledge.

Q But was it BIA well drilling?

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A There was some activity around Holy Rosary Mission, but that is on Pine Ridge. Otherwise I can - nothing off the reservation I know of.

Q That was my question.

A Yeah.

Q Do you - do you - have you studied the current demographics of the Yankton Sioux Reservation?

A Yes, I have.

Q And do you have any statistics you can give us on those?

A Yes. And I should - I should preface this by saying that there are three sets of statistics about contemporary tribal demographics. One comes from the annual census - or I'm sorry, the federal census every ten years. The second is issued by the Bureau of Indian Affairs which stresses people who live on the reservations are close enough for employment. And the third you can acquire by calling the tribal office.

In the exhibits that are entered, I have reported those statistics that I received from the tribal office. But out of curiosity, I went to the federal census records and I have in hand, and I brought along a copy for Mr. Guhin if he would like to have one, of what the federal census records have to say.

Q Okay. Would you tell us what you have discovered about demographics of the Yankton Sioux Reservation?

A What I discovered here, and we are looking at recent years,

[p. 82, ll. 1, 23-25]

According to the federal government -

* * *

A Well, I was curious about what has happened over the last quarter century. And I discovered that according to the federal census, which counts Native Americans much lower than

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the tribe does itself as far as reservation residence is concerned, that the census records say, and these are the ones that come out every ten years for anybody defined, in 1970 here they counted 926 in Charles Mix County. In 1990 -

Q 926 what?

A Native Americans, Indians, in Charles Mix County. 926. And in 1990 they counted 2,002, which would be an increase of 116 percent. I was curious about what had happened to the non-Indian population in that time, and discovered that that dropped from 9,063 to 7,123 which would be a reduction of 21.4 percent.

Q Between 1970 and 1990?

A Yes. In 20 years, the Indian population increased by 116 percent and the non-Indian population declined by 21.4 percent.

Q Are you able to tell us when the Indian population began increasing in that period?

A I couldn't find a clear record prior to that time in federal census, but if you looked at the documents that are entered by exhibits, you will discover that the first dramatic leap came between 1960 and on or about 1980. By that time it was beginning to climb.

Q Doctor Hoover, have you had an opportunity to observe religious sites on the Yankton Sioux Reservation in your time as an expert on that reservation?

A Yes, I have.

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Q Do you know the approximate location of the landfill proposed site?

A Yes, I visited that within the last couple of weeks.

Q The site itself?

A Yes.

Q All right. What do you know about the proximity of religious sites to that landfill, proposed site?

A I know about three sites, two of which I've visited many times myself, and one that I haven't. I'll mention the first – or the last of these first. There is a sundance site close by, which should be attested to by other people. But in talking to Indian department personnel at the superintendency in Wagner about this issue, the ones that I do know about, we agreed that as the crow flies, it would be no more than a mile from this site, proposed, and a very well-known fireplace in the Native American church.

Q What significance does a fireplace have in the American Indian American church or is it Native American –

A Yes, Native American church. A fireplace is a place of religious worship. And that place happens to belong to a relative of some people in this courtroom named Quenten Bruguier. That's Q-u-e-n-t-e-n B-r-u-g-u-i-e-r. This is very well-known in the tribe, and it would be approximately a mile away.

Then the other one is approximately a mile and a half

[p. 85, ll. 1-17]

south of Lake Andes which is, oh, maybe a quarter to a third of a mile east of the highway that runs down to – to Fort Randall. That's a very prominent hill that was very well-known among old timers as a fasting site.

Q And is that of religious significance?

A A fasting site is – had the same meaning to this tribe that the wilderness would have had to Jesus Christ or to Moses. It's a place where people go to pray and to refresh themselves and to find truth.

Q And how close is this to the proposed landfill site?

A And it was difficult to measure as the crow flies there. What I'm saying is that that was, as I checked the description at the time that we nominated this to the Historical Register of National Sites, it – it was about a mile and a half south of the City of Lake Andes, so I'm guessing at the very maximum it would be maybe two to two and a quarter miles from this proposed dump site.

* * *

[p. 86, ll. 10-25]

* * *

Q Take a look at Plaintiffs' Exhibit 70, and describe this for the record, please.

A This says Indian Land Areas Judicially Established in 1978.

Q Well, the map was made up when?

A In 1978.

Q All right. And do you see the Yankton reservation on this map?

A The Yankton is identified right here (indicating.) This is the section.

Q In other words, it's identified on the map itself, is that correct?

A Yes.

Q All right. Now, if you would take a look at Plaintiffs' Exhibit 68, can you describe what that exhibit is?

A This is an official map issued by the Department of the Interior, Bureau of Indian Affairs.

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Q What year?

A In 1969.

Q And what does it show?

A What it shows is the outline boundary of the reservation, and it represents the placement of allotments within those boundaries.

Q Is there a legend on this map?

A Yes, there is.

Q Can you describe for the record what that legend says?

A The legend identifies in red the allotted land, in green the tribal lands, and it looks like red and blue, tribe owned an interest, and finally what appears to be a blue legend, FHA and tribe.

Q Thank you. You can take a chair. Now, Doctor Hoover, have you had occasion to read other agreements between the government and an Indian tribe which would cede Indian land to the government?

A Yes.

Q What were those agreements that you read aside from the Yankton agreement?

A Well, the one most vivid in my memory, because of recent, it was the land cession agreement by the Lower Brule Tribe that was made explicitly to raise money to help Brules move from the Lower Brule up to the Upper Brule or Rosebud Reservation. And so the tribe sold and the federal government used money to

[p. 88]

Acquire land, and what that did was actually reduce the size of the Lower Brule Reservation.

Q Was there a judicial determination on that particular sale?

A There was congressional, and the judicial I don't want to interpret because - but I can say that this was congressionally approved.

Q It was congressionally approved. Were the boundaries diminished?

A The boundary of that reservation was diminished, yes.

Q And all sides understood that?

A To my knowledge.

Q Now, do you have an opinion with respect to comparison between the Yankton Sioux Agreement of 1894 and the Lower Brule agreement that you just described with respect to the intent of Congress vis-a-vis reduction of the boundaries?

A Well, those two on their face – and administrative and congressional records would say different things. They – in the case of Lower Brule, everybody agrees that they're actually shrinking the reservation to sell a block of land to raise money. In the case of the Yankton, from historical records, I can find no evidence that they were shrinking the size of the reservation. What they are doing is accommodating white people for settlement within boundaries.

Q Doctor Hoover, would you look at Exhibit Number – Plaintiffs' Exhibit Number 31 which has not yet been admitted

[p. 89, ll. 1-9]

into evidence, and describe that again for us. Or I guess for the first time.

A Exhibit Number 31 is entitled Yankton Sioux Tribal History, and it is under declared copyright to myself in 1995.

Q Who authored that document?

A I was the author.

Q And was that as result of the research you have done on the Yankton Sioux Reservation?

A Yes.

[p. 92, ll. 18-24]

Q Would you describe Exhibit Number 78, Doctor Hoover.

A Exhibit Number 78 is entitled the History of Yankton Tribal Governments, copyrighted to myself and authored by myself in 1995.

Q All right. Does this document describe the history of the government of the Yankton Sioux Tribe?

A Yes, it does.

[p. 96, ll. 23-25]

Q Good afternoon, Professor Hoover. I would like to start with a factor that I think you may have alluded to already. Is it true that the use of the term "reservation" has different

[p. 97]

Applications depending upon who's using it and how they might be using it?

A Yes. In my – in my experience, that's true.

Q And can you tell me what different applications the use of the word "reservation" might have?

A It has cultural meaning.

Q Go ahead.

A Which I hear frequently among students and others that going back to the reservation means going back to more than simply a place. So in a cultural sense, that's true. And now days of course, going to the reservation means going to the community or going to the casino and spending money. The reservation also means a place that is contained by boundaries. And, finally, I suppose the reservation means a place where tribal members as individuals or tribes collectively own land. Those are the ones I can think about, that come to mind offhand.

Q And some of those definitions or some of those uses of the word "reservation" have a legal connotation and some do not, is that correct?

A I want to repeat that I'm not an attorney, and so I - I will give you the judgment of a professor/historian, but not of a lawyer. And legal connotation asks me, does it not - if I understand your question correctly, Mr. Guhin, that does ask me to respond as an attorney. You said legal connotations.

[p. 103, ll. 18-25]

* * *

Q Is it true you can't always tell if the use of the word "reservation" by a federal officer means legal office - means a legal reservation and boundaries or simply a home for Indians?

A Without context, you wouldn't know.

Q And that's true of documents generated by the Office of Indian Affairs, isn't that, Professor?

A What is the question?

[p. 104, ll. 1-10]

Q It's true that you can't tell how a federal official is using the term "reservation" simply by looking at the document, is that right? And that includes documents of the Commissioner of Indian Affairs, Bureau of Indian Affairs?

A Unless he defines it.

Q Unless he defines it?

A If he gives you context, then you would know.

Q Context like perhaps description of boundaries?

A Or a discussion of activities. Without a context, you cannot know. This requires qualification.

* * *

[p. 108, ll. 17-25]

* * *

Q Professor, let's move on. Did you rely upon population statistics, present or past, in making your analysis of whether the reservation was diminished or disestablished?

A No.

Q You did not. Did you rely upon case law in making your analysis of whether or not the reservation was diminished or disestablished?

A No.

Q So specifically you did not rely upon United States Supreme

[p. 109, ll. 1-20]

Court decisions including the Dakota [sic] case?

A I have read the Dakota [sic] case.

Q Did you rely upon the Dakota [sic] case in making your determination of whether the Yankton reservation has been diminished and disestablished?

A No.

Q Did you make any analysis of cases from the state civil and criminal courts in determining whether or not the reservation was diminished or disestablished?

A The Yankton?

Q Yes.

A No.

Q Did you make any analysis of cases from a tribal or a CFR court in determining whether the Yankton reservation was diminished [sic] or disestablished?

A No.

Q Did you make any analysis of the practices of federal courts in making your determination of whether the Yankton reservation had been diminished or disestablished?

A No.

* * *

[p. 115, ll. 15-22]

* * *

Q Sure. Did you consider the statement of the Acting Commissioner Frank Armstrong found at Page 7 of that document where he discusses the liquor provision? Right at the top of the page, Professor.

A Uh-huh, yes.

Q And did you consider why the acting commissioner cited the case of United States versus 43 Gallons of Whiskey?

A I just hadn't thought about why he cited it, no.

* * *

[p. 118, ll. 15-24]

* * *

Q - at Page 38 which says "22 new names are added to the number and the treaty is gaining friends every day. And so far as I find (except in the case of Samuel Pickard it is very doubtful if he is there) that no undue pressure was used or improper methods resorted to by the commissioners or any other persons last winter to secure signers." Mr. Cadman decided, Mr. Cadman the investigator, decided there wasn't anything to the charges being made, isn't that true?

A Well, evidently he doesn't account for the fact that only 55 point, what, 5 percent signed it.

* * *

[p. 124, ll. 19-25]

* * *

Q Professor, can you tell us what year the speaking council was formed?

A The constitution was written in 1899. The speaking council was organized on July 4th, 1892.

Q Can you tell us why it was formed - excuse me. Can you tell me who formed the council, who was responsible for it?

A Agency personnel, I suppose, and a succession of several

[p. 125, ll. 1, 10-14]

Agents.

* * *

Q Is it accurate to say that Foster designed the speaking council as an instrument of government thereby agency personnel could easily solicit popular endorsement for economic and cultural change?

A Yes.

* * *

[p. 126, ll. 17-25]

* * *

Q And does part of that constitution say that we establish this council, having for its executive officers the Honorable Commissioner of Indian Affairs and the United States agent in charge, will have the sole power to

approve or disapprove any decision that may have been made by the council?

A It say - that says to me that those two must approve, but we were talking about the speaking council and the business committee which was chaired by the Indian superintendent. These are two different things. That's a categorical statement

[p. 127]

that says that the tribe lives under the power of the federal government to me.

Q Is the categorical statement found in the constitution of the speaking council?

A Yes. And it reads very much like the Wheeler-Howard Act in that regard.

Q Is it true from 1903 to 1912 that there was no effective business committee?

A I couldn't discover the existence of a business committee during that period.

Q And is it accurate to say that in 1912, a business committee was selected, legislated, but not recognized by federal officials in the District of Columbia?

A Yes, because they were too traditional.

Q And also because the voter turnout was inadequate, is that right?

A Yes. That's in the larger document we have not entered I believe in evidence.

Q Only about 50 people that showed up?

A You are taking from something that hasn't been entered into evidence here.

Q I'm simply asking you questions about history.

A Yes. Okay.

Q Is that right or not?

A In other words, we are not talking now about Exhibit Number

[p. 128, ll. 1-7]

78, are we?

Q Well, I believe we are, Professor.

A Well, this is a narrow version, and you were quoting from a larger document. But what you have quoted is right.

Q Okay. Is it true that in 1914 there was an attempt by Alfred Smith to organize a business committee which failed?

A That's correct.

. . .

[p. 129, ll. 13-25]

. . .

Q "Although legal mechanism existed to allow the operation of a business committee, none functioned to serve the general interests of the Yanktons except a delegation from the tribe to look after its interests at the intertribal treaty council at Fort Thompson in 1920."

A I believe that that is roughly true. What that gets around to summarize, from 1903 to 1920 you would find the election of business committees, but you cannot find evidence what they were doing until 1920. Then, of course, a whole new system took off under the authorization of the speaking council constitution.

Q In 1924 then, an executive council, executive committee was formed, is that right?

[p. 130]

A In the larger document you haven't handled, you will discover one person was chosen in 1921 and a larger committee soon thereafter, and then finally the executive committee that was in continuous session was chosen in 1924.

Q Okay. And what were the responsibilities of the executive committee?

A Its primary responsibility was claimed - was claim - its primary responsibility at that time for, I should say, for probably any Sioux tribe at that time, was the claims issue. Because of the Omnibus Act, on claims of 1920, and the fact -

Q Excuse me.

A Excuse me. The fact that the - the federal government was distributing tribal funds and establishing roles and trying to dissolve the past difficulties of the tribes. I think it's true what you say, but I wanted to make sure the context is right. Claims became a very big issue across Sioux country with the formation of the treaty council and the intertribal agencies.

Q Is it accurate to say that the executive committee did not have the authority to do the business of a general business committee?

A In the 1920s?

Q Yes.

A No, it's not really true, although that statement was made

[p. 131, ll. 1-19]

in 1932, because I know that this committee dealt with other matters; for example, with tribal enrollments.

Q In your document Yankton Governmental History, did you write "Executive committee established during August, 1924 worked with the specific charge of dealing with tribal claims against the United States"?

A Yes.

Q Although the general council of adults could at any time have used the 1891 Constitution as authority to enlarge its role into that of a general business committee?

A Yes.

Q It did not do that, did it? It did not enlarge its role into a general business committee?

A That committee had to deal with - with some issues. I do know that. And specifically I remember enrollments, but the - what I was getting at in that statement, Mr. Guhin, is that the 1891 Constitution, to my knowledge, unless you have discovered something that I don't know, was never negated. Not until 1932.

* * *

[p. 133, ll. 6-25]

* * *

Q Moving to the 19 - the period of the 1930s, 1932, I understand the agency was moved from Yankton to Rosebud and became a subagency?

A No. The - the Yankton tribe lost its agency status and became a subagency under Rosebud, and the subagency was headquartered in Greenwood.

Q And what year was that?

A That took place in 19 - I think the - the real transformation was 1933.

Q Okay. And when was the farm station disbanded?

A In 1932 in anticipation of that. That - that change was anticipated and announced during 1932.

Q Professor, on Pages 4 and 5, you cite the perceptive Clement Smith.

A Yes.

Q And Mr. Smith evidently was a perceptive observer of the scene historically, is that what you are telling us?

A In the larger document you hold, you discover that Clement Smith became a very bitter man, as did Clarence Forman, but at that time it would be defensible to say that Clement Smith and

[p. 134]

Clarence Forman, among those who wanted to promote a new constitutional form of government, were perceptive. Yes.

Q Did Mr. Smith – I know you quote a 1934 statement of his. That statement is longer than actually appears in the Document 78, isn't it?

A Well, I think so, but you're – it's getting [sic] late in the afternoon here. You are pushing me pretty hard, John. Okay. What page are we on?

Q Pages 4 to 5 of Exhibit 78.

A Okay. And what are we –

Q Did Mr. Smith in 1934 actually in that same – that same time, also say that for more than a half century, they – "they" being the Yanktons – have been floundering and have totally failed to bring themselves into one unified body, and also said all the organizations, all their organizations have failed to accomplish anything?

A I believe that when I presented that as a preview in writing, what I said was that Mr. Smith was trying to get people to cease to be segregated into the divergent groups of types that are represented in one of the exhibits, and that I thought that he was overstating his case.

Q He actually didn't say that, though, did he?

A Yes, he did. I quoted him, and I –

Q And you call him perceptive?

A I think he is very perceptive, but I think he's standing up

[p. 135, ll. 1-8]

and speaking, if I may, like Newt Gingrich, saying that life is bigger than it really is. I think that people tend to do that in political situations. This is a very able person who should be remembered well.

Q Do you – do you recall labeling him in 1934 as a prominent Yankton leader and a careful student of tribal history?

A Absolutely. I think he was simply exaggerating in this case.

* * *

[p. 190, ll. 3-25]

* * *

Q And Commissioner Rhoads states that – in that letter that the county and state have jurisdiction over non-Indian lands within what was, quote, heretofore a part of the reservation, end quote, does it not?

MR. ABOUREZK: I renew my objection, Your Honor, on the grounds – on the grounds that he's trying to get it in by a backdoor, not allowing me to object because he's not introduced it, but he's attempting to get the entire text read into the record before he introduces it, and I object on those grounds.

THE COURT: Overruled.

BY MR. GUHIN:

Q Do you need the question reread?

A Yes.

MR. GUHIN: Could you read me the question, please.

(The question on Page 190, Line 3 read back by the reporter.)

A Well, I can quote from this document which says "... through the issuance of fee patents to allottees and purchasers, and that such land is now under the jurisdiction of the state and the county authorities. . . ." Is that the passage we're referring to?

Q Yes.

A Okay.

[p. 191, ll. 1-22]

Q Do you draw any significance with regard to the disestablishment question from Defendants' Exhibit 667?

A Regarding the disestablishment of what?

Q The disestablishment of the Yankton Sioux Reservation.

A No.

Q Is this - does this constitute evidence that the reservation has been disestablished?

A Historically, it doesn't to me.

Q Does the fact that the - that the Yankton Agency is going to be deprived of the field notes for the, quote,

reservation, unquote, does that constitute any evidence of disestablishment of the reservation?

A Well, it seems to me if we - we are - we are considering these together, are we not?

Q Yes.

A And on 668 it says, "For joint use of the county surveyor and the Indian office." So I take this to mean that it says that both jurisdictional entities would have access to the records. Is that not true? This is a request from - from the chairman of the county board. And I'm quoting here, "For joint use of the county surveyor and the Indian office," end of quote. That's his request.

* * *

[p. 197, ll. 22-25]

* * *

Q You have before you Exhibit 651, do you not?

A Yes, I do.

Q There is no - is it accurate to say there is no provision within the Constitution of 1932 which claims jurisdiction over

[p. 198, ll. 1-10, 14-25]

Any specified territory?

A I have been using a digest of this constitution. I would have to go back and read it again, if you want to take the time.

Q You're not prepared to say yes or no right here? And that's fine if you can't.

A I would have to refresh my memory.

Q Do you know whether Article 3 of that constitution says that a tribal councilman could be from anyplace within Charles Mix County?

* * *

Q Okay. So there was no – and – and what has been described as the Yankton Sioux Reservation under the Treaty of 1858 is only about half of Charles Mix County, is that right?

A I have no breakdown on percentage, Mr. Guhin. You can help me there.

Q Okay. You don't know if it's about half?

A That seems to be a little too small an estimate, because it's all of lower Charles Mix County.

Q Okay. After the Tribal Constitution of 1932 allowed the selection of a business claims committee, is it accurate to say that the federal government suspended that Yankton Sioux Business and Claims Committee in about 1936?

[p. 199, ll. 1-7]

A In our deposition I described the circumstances under which the activity of the business committee was suspended, but then I went on to indicate to you in correspondence that actually involved President John Kennedy that in retrospective it was acknowledged that that business committee had never ceased to exist and that the government had abided even though it had been inactive, and you have that material in your possession.

* * *

[p. 201, ll. 10-18]

* * *

Q Professor, can you answer that question? Can you answer the question: Was there an operating business and claims committee from 1936 to 1965?

A There was a business committee whose operation was suspended.

Q Okay. There was no operation of the business committee for the 30 years, 29 years, from 1936 to 1965. Okay.

A The only answer – honest answer is that that power was transferred to special committees.

* * *

[p. 205, ll. 3-25]

* * *

Q Okay. Well, let's get to that. I'll now turn to the new constitution. The genesis of the constitution, I suppose you could put it, was in October of 1960 when there was a committee of some young men formed, isn't that right?

A This is not a new constitution. This is a process of amending the constitution of 1932.

Q Okay. For the revision of the constitution of 1932, there was a committee of young men formed, is that right, in 1962?

A Yes.

Q And these were identified as progressives, is that correct? Well, let me ask the question this way: These

young men could be identified, should be identified as progressives?

A Well, in that context I'd rather not make the determination, because I know some of those families, and I wouldn't quite agree with that characterization.

Q Okay.

A I think they were responsible tribal leaders.

Q Okay. So these were responsible tribal leaders who knew what they were doing, is that what you're telling us?

A They knew what they wanted to do in their own constituencies.

Q And one of the things that these responsible people did was to study copies of the constitution of other tribes?

[p. 206, l. 1]

A Correct.

* * *

[p. 207, ll. 1-9]

Q Okay. But in this - in this case the tribe looked to constitutions of other tribes, is that right, the young men apparently did examine copies of constitutions of other tribes?

A Yes.

Q Okay. And this constitution was then submitted to Washington, D.C.? Excuse me. The constitution was then

adopted and then it was submitted to Washington, D.C., is that right?

A Yes.

* * *

[p. 208, ll. 11-25]

* * *

Q So you don't know the tribal constitution well enough to say whether or not this is the language?

A If I had my copy, I could compare it.

Q But you don't know sitting here whether or not it is or it isn't, is that what you're telling us?

A That's correct.

Q Do you know whether the United States Government attempted to or suggested or demanded that the tribe amend this section like it did certain other sections of the constitution?

A Pardon me?

Q Well, Professor, I understand that the constitution was written, and then it was submitted to Washington, D.C. Excuse me. It was written and adopted and then it was submitted to Washington, D.C., is that right?

A It had to be adopted by the tribe before it was accepted by

[p. 209, ll. 1-13]

the Secretary of the Interior.

Q And then it went to the Secretary of the Interior, and the Secretary of the Interior sent back a number of corrections or a number of revisions that the Secretary thought was appropriate – were appropriate, is that right?

A As always, yes.

Q Okay. And do you know whether the Secretary of the Interior suggested or demanded any change to Article VI, Section 1?

A I don't recall. I have been through the file in Kansas City, but that fine point I don't recall.

Q In fact, it didn't – he didn't, did he?

A I don't recall.

* * *

[p. 220, ll. 10-25]

* * *

Q You talked about the one million immigrants a year as being part of the overall congressional – what the congress had in mind at the time of the 1894 act, is that right?

A The context of my statement there is a matter of public record in immigration history. In anticipation of approaching a million a year, congress authorized the opening of Ellis Island as a center that would accommodate more immigrants, and in fact in the years 1901, 1902, 1903, we took on a million a year, which was the peak prior to the last year when we believe with both legal and illegal immigrants we've now exceeded a million a year. So in all of American history, my point was that we're taking on more immigrants than we ever had, and the

first restriction against immigration by congress was in 1875. So there was nothing to slow it down. And the point of the presentation was that there was great pressure to find places for people to go, including Charles Mix County, which had been

[p. 221, ll. 1-6]

established in 1879.

Q Okay. And is it your view that congress meant to send these – these immigrants, these poor oppressive peoples from overseas, to another place where they could not govern themselves?

A I don't remember ever reading that in immigration history.

* * *

[p. 240, ll. 11-25]

* * *

Q Now, Professor, yesterday you testified, if I recall correctly, that there were in 19 – excuse me. In 1990 there were 2002 Native Americans in Charles Mix County. Do you recall giving that testimony?

A I testified that I had checked the federal census and had discovered in the census report that I examined that it listed 2002 persons who were Native American in Charles Mix County, and during the same year 7,123 that were Caucasian.

Q So you offered that testimony yesterday. In Plaintiffs' Exhibit 31 I notice it states that there are 2,980 – excuse me, that there were 2,980 enrolled members who live

within the reservation boundaries in 1987 and 3,400 in 1993. Is that right?

A What is your question?

Q Did you set that out in Plaintiffs' Exhibit 31, Page 1? [p. 241, ll. 1-5]

A Yes.

Q And it's a fact that those two numbers are not consistent?

A That's correct.

Q And you accept the U.S. Census statistic number?

A No.

* * *

[p. 242, ll. 20-25]

* * *

Q So you got the Census Bureau, the area office and the tribe?

A That's correct.

Q And the number that we have in Plaintiffs' Exhibit 31 is from the tribe?

A Yes, sir.

[p. 243, ll. 1-7]

Q Why didn't you tell us that in Exhibit 31?

A I could see no reason to do it.

Q And you couldn't see any reason to tell us that the Census Bureau thought it was an erratically different number?

A I used this in publications, and some of this I simply took the statistics that I thought was the most accurate, and that should be the one that is kept by the tribe.

* * *

Darrell Drapeau Trial Testimony

[p. 278, ll. 11-15]

* * *

Q Okay. Mr. Chairman, what is your educational background?

A I have a Bachelor of Arts degree in prelaw, political science. I've got a parallel diploma. And I attended the special scholarship program in law for American Indians at the University of New Mexico.

* * *

[p. 293, ll. 19-25]

* * *

Q So, irregardless of who has been regulating these areas, the tribe has not been regulating the environmental concerns up to this point in time that you're talking about today, have they?

A No, because they haven't been regulating them, no.

Q But you'll admit that somebody has been regulating them, will you not?

[p. 294, l. 1]

A Yeah, somebody has been regulating.

* * *

[p. 299, ll. 18-25]

* * *

Q You mentioned, Chairman Drapeau, that the tribe currently has an environmental section, is that correct?

A Yes.

Q And how many people are currently working in that section, if you know?

A There's one for sure that I know of, and there is three others who help out in that area.

Q Okay. Are any of these people working in the environmental

[p. 300, ll. 1-13]

section of the tribal government at this point in time registered engineers?

A Registered engineers?

Q Yes.

A No.

Q Have they had any experience in monitoring or administering environmental protection programs?

A No. No.

Q Does the tribe own any of the specialized equipment necessary for testing and - and properly monitoring some

of these environmental programs that the tribe would like to take over regulation of?

A Not at this time, no.

* * *

[p. 303, ll. 1-10]

Q Good afternoon, Mr. Drapeau. Dropping back to your background, I think you said you had a degree in prelaw, political science, is that right?

A Right.

Q And you were involved in a program entitled Law for the American Indian at the University of New Mexico?

A That special scholarship in Law for American Indians.

Q And in that - in that course you became familiar with concepts in Indian law, is that right?

A Yeah. Yeah.

* * *

[p. 304, ll. 4-10]

* * *

BY MR. GUHIN:

Q And did you testify under oath before the South Dakota Board of Minerals and Environment?

A Yes.

Q And when you testified, you were representing the tribe as chairman, is that right?

A I was there as chairman, yes.

[p. 306, ll. 6-15, 22-25]

BY MR. GUHIN:

Q Referring you to page 556 and Line 10, if you recall this testimony: "Q. Are you familiar with the former boundaries before that area was opened up of the Yankton Sioux Reservation?" By Mr. Drapeau: "Yes. Q. Was that land within the former boundaries of the Yankton Sioux Reservation? A." Again, by you: "Yes." Do you recall giving that testimony?

A I remember that, yeah.

Q And is that testimony correct?

A It's correct as written.

BY MR. GUHIN:

Q Mr. Drapeau, is it your view that Mr. - Mr. Drapeau, you testified on direct that there was a reservation at Yankton, didn't you?

[p. 307]

A I testified here -

Q Yes.

A - that there was a reservation at Yankton.

Q Yes. Did you?

A Yes, I think so, yeah.

MR. GUHIN: I'd submit the matter as impeachment, Your Honor. At a former hearing under oath he agreed that there was former boundaries of the reservation. It's clear impeachment.

THE COURT: Let me look at the testimony since you haven't provided me with a copy.

MR. GUHIN: Yes, Your Honor.

THE COURT: Page 558?

MR. GUHIN: 556, Your Honor.

THE COURT: Line what?

MR. GUHIN: Line 10.

THE COURT: Taken within the context of the hearing where you were on one subject and went to another subject for those two questions and onto another, I don't believe that's impeachment.

MR. ZEPHIER: Move to strike then, Your Honor, the questions.

THE COURT: Beg your pardon?

MR. ZEPHIER: Move to strike the questions concerning that prior testimony.

[page 308]

THE COURT: No. The attempt to impeach stands, and it's just that I'm the finder of fact as well as the applier of the law in this case, and I'm just telling you right now it's not impeachment under the setting in which it was asked and the sense in which the response was given. But the attempt stands. It's just that I'm telling

you right now as a finder of fact it doesn't get anyplace. Go ahead.

BY MR. GUHIN:

Q Do you agree that the Yankton Reservation has former boundaries, Mr. Chairman?

A I agree that it has boundaries, yeah.

Q Do you agree that it has former boundaries that existed in 1858?

MR. ZEPHIER: Objection. Asked and answered.

THE COURT: What's the objection?

MR. ZEPHIER: Asked and answered.

THE COURT: Overruled.

A Am I supposed to?

BY MR. GUHIN:

Q Yes.

A Oh, okay. Yeah, I believe the reservation has former boundaries that existed prior to 1858.

Q Do you believe that the boundaries as they exist today are the same as they existed in 1858?

A I - I believe they're the same as they - as they were in [p. 309]

1858, yes.

Q Why did you agree that the McBride land was within the former boundaries of the reservation at the administrative hearing?

MR. ZEPHIER: Objection for the same purposes as before, Your Honor, improper impeachment.

THE COURT: Well, I'll - it's a proper question on cross-examination. I'll allow him to inquire into it.

A State your question again, please.

Q Why did you agree at the administrative hearing under oath that the McBride land was within the former boundaries of the reservation?

A I think that prior to - at that time, that I - that I wasn't clear on the - on the questioning before me and - and there - I could have clarified what it was I really meant to say as opposed to what came out and was printed on - on paper.

Q Are you telling me that you didn't understand the question that was asked you?

A It could have been at the time, yes.

Q And there were two questions. I'll just repeat them: Was that land within the former boundaries of the Yankton Sioux Reservation? Are you familiar with the former boundaries before that area was opened up by the Yankton Sioux Reservation? Are those the two questions you didn't understand?

[p. 310, ll. 1-11]

A Okay. Now, that's where I get hung up on, because to me the boundaries of the 1858 Treaty are intact, and former boundaries would be anything prior to 1858.

Q Well, the land that we're talking about, the land that was talked about at this administrative hearing was the

McBride land. The McBride land hasn't moved. It's always been in the similar position, isn't that right?

A It's still in the same place, yes.

Q And so it's always been within the boundaries of the reservation as it existed within 1858?

A Within 1858, yes.

* * *

[p. 311, ll. 10-25]

* * *

Q Okay. Presumably, the – or the McBride land is within the boundaries of the reservation as defined by the Treaty of 1858, is that right?

A Okay. That's right.

Q And when you testified at the administrative hearing, you talked about the land, you agreed that the land was within the former boundaries of the Yankton Sioux Reservation?

A Okay.

Q Is that right?

A I see that, yes.

Q And you meant by that – did you mean by that, that that land was within the former boundaries of the Yankton Sioux Reservation as set out in the Treaty of 1858?

A See, in these – these questions, though, what's throwing me is that there is no reference to 1858. All it's saying is within the former boundaries of the Yankton Sioux Reservation,

[p. 312]

and what I'm saying is that the former boundaries of their Yankton Sioux Reservation were those boundaries prior to 1858, boundaries that would have reduced the – reduced the reservation boundaries to the 1858 boundaries.

Q Are you telling – are you telling the Court and us that you were thinking the question referred somehow to what the boundaries of the Yankton Sioux Reservation were in 1840 or 1830 or 1820?

A I'm saying that I didn't – that I didn't understand fully that – that question at the time it was – it was asked of me, and I'm saying that because of my belief that the – the boundaries of the '58 Treaty are intact and reference as to former boundaries are pre-1858 boundaries. There was a –

Q Just once more. The McBride land is not within the former boundaries pre-19 – 1858, is it, I mean, it's within the 1858 boundaries?

A It's within the 1858 boundaries, yes.

Q When you – when you say you were confused by these questions, did you – did you stop the hearing and say, I don't understand your questions like you're doing today?

A No, I didn't.

Q Why didn't you do that, Mr. Drapeau?

A I don't know. I just didn't.

Q So the – the issue of whether or not the reservation was a former reservation wasn't serious enough for you to stop?

[p. 313, ll. 1-2, 11-25]

A It was serious, but obviously I didn't stop the proceedings at that time and –

* * *

Q Could the witness be supplied with Exhibit 614, please. I think those are numbered at the side there, and I'd like you to turn to Table 17. It's the second page where it says "Selected population characteristics for American Indian and Alaska Native areas, 1990," and it has entries of the Lake Traverse Reservation, but at the bottom is the Yankton Reservation. Do you see that, Mr. Drapeau?

A Yes.

Q And do you see the total of American Indians listed?

A Okay.

Q 1,994, I believe?

A Right.

Q And your figure is, well, either – okay, I guess 3,000 for two to three years later. How do you account for that difference?

[p. 314]

A The figure I'm based on – I'm stating is a rough figure provided by the enrollment office. Every time anyone is to ask, you know, how many members live on the reservation, then the – the easiest response, whether it's totally

accurate or not, is for us to say, well, there's roughly half. That's what it's been in –

Q Okay. So the basis of your figure is to take the total enrollment and divide by two?

A Well, at one time – at one time somebody had to come up with the figure of 3,000 tribal members living, and it's kind of always carried forward since then.

Q Somebody did. Do you know how somebody might have done that?

A Well, I assume it was somebody that worked with the enrollment office.

Q So somebody did something with the enrollment office. Do you know when that somebody might have done their something?

A No, I don't, no.

Q And you don't know [sic] what they did, do you?

A No. I just know that that's the figure we use, and roughly half of the members live on the reservation, yeah.

Q And you're telling us it's not based upon an actual count like the United States Census is?

A I wouldn't know for sure, no.

Q It is not based on –

[p. 315, ll. 1-4, 18-25]

A I assume it probably isn't.

Q It's just divided by two for the total, is that right? Is that right?

A Yes.

* * *

Q Can you tell me, does the tribe do any regulation of drinking water sources for public water systems?

A Not at present, no.

Q Does it do any regulation of underground storage tanks?

A Not presently, no.

[p. 316, ll. 1-7, 17-25]

Q Does it do any regulation of discharge in the surface water territories?

A Not presently, no.

Q Does it regulate emissions into the air?

A No.

Q Does it do regulation mining?

A No.

Q Has it taken any enforcement action against any hazardous waste generated?

A No.

* * *

BY MR. GUHIN:

Q Do you know whether the tribal court has ever taken jurisdiction of a criminal case against a tribal member for a violation which took place on nontrust land?

MR. ZEPHIER: I'll object to that, too, Your Honor, as calling for a legal question and on relevance.

THE COURT: For a violation of what?

MR. GUHIN: For violation of any criminal ordinance of the tribe.

[p. 317, ll. 1-9]

THE COURT: How does the criminal jurisdiction play in this?

MR. GUHIN: The tribal chairman has announced that one of the things that he is here for, has told us that one of the things he is here for, that he represents the tribe for, is to look after the interests of the tribe, and I'm simply examining on what the tribe does.

THE COURT: Well, all right. Overruled. Go ahead.

A I don't know of any, no.

* * *

[p. 318, ll. 12-25]

* * *

Q Mr. Drapeau, I'm going to ask you a slightly different question than we had on the table when we left. Do you know whether the state court has undertaken the prosecution of tribal members in state court for offenses not on trust land but within the 1858 boundaries?

A I think they have, yes.

Q And has the state court done that on a regular basis?

A Yeah, I would say so.

Q Do you know of any case in which a federal court has taken jurisdiction of a serious crime committed by a tribal

member not on trust land but within the 1858 boundaries?

A I don't recall. I don't -

Q Do you know if the tribe has done game and fish enforcement on nontrust lands within the 1858 boundaries?

[p. 319]

A I don't know. I don't - I don't think so, no.

Q You don't think it has undertaken any -

A Right.

Q - game and fish enforcement. Do you know whether non-Indian - non-Indians or nonmembers are now forced into tribal courts under any circumstances?

MR. ZEPHIER: Objection, Your Honor, on relevance.

THE COURT: Overruled, but the question is compound. Why don't you rephrase it.

MR. GUHIN: Yes, Your Honor.

BY MR. GUHIN:

Q Do you know whether non-Indians are now forced into tribal courts against their will?

A No, I don't know of any.

Q Are they forced - do you know - are non-Indians forced into tribal courts against their will now?

A No, they're not being forced at all.

Q Okay. And is the same true of - well, is the same true of nonmember Indians?

A Once again, I don't know. I don't know.

Q Is it true that the tribe has not sought general civil and criminal jurisdiction to date over non-Indians.

MR. ZEPHIER: Same objection, Your Honor.

THE COURT: Overruled.

A I don't think it has, not that I can remember.

[p. 320]

BY MR. GUHIN:

Q Would you agree that it would make a lot of difference if the 1858 boundaries were found to be intact in this litigation?

A Would it make a lot of difference, is that what you're -

Q Yes.

A I think it would, yes.

MR. ZEPHIER: Objection, Your Honor. That's a vague question and calling for a conclusion, and I believe it would be terribly misleading.

THE COURT: Overruled.

BY MR. GUHIN:

Q Assuming the tribe is successful in this litigation, does it intend to regulate drinking water and public water supplies of all Indian and non-Indians within the 1858 boundaries?

MR. ZEPHIER: Objection. Speculation.

THE COURT: Overruled.

A I think that, let's see, as it pertains to tribal members, yes. As it pertains to non-Indians, I wouldn't know. That's up to the tribe.

BY MR. GUHIN:

Q You speak for the tribe, don't you, Mr. Chairman?

A When I have the authority to, yes.

Q Do you recall a deposition taken on January 26th, 1995?

A Yeah.

Q And were you under oath at that deposition?

[p. 321]

A Yes, I was.

Q And do you recall a question as follows: "Q." - this is a question I asked you. This is on Page 44, Line 19, if you'd like to look at your deposition.

MR. ZEPHIER: I'll object, Your Honor. Does this witness have a transcript?

MR. GUHIN: Yes, he does.

A No, that's not the one.

MR. GUHIN: Oh, he doesn't. I'm sorry. Your Honor, if I may go get the deposition?

THE COURT: Certainly.

BY MR. GUHIN:

Q There you go. Sorry. Again, I'd like to refer you to Page 44, and you'll notice the pages are snug on that version of the transcript. Page 44 at Line 19 is where I'd like to start to make the inquiry.

A My response is still yes as its [sic] pertains to Indians, and once again, as far as the non-Indians, if I was to say, and which - if I was to say pertaining to non-Indians, I don't think I would - I have that authority from general council to.

Q Do you recall this testimony starting at Line 19: "Q. We talked about several environmental programs. Assuming the tribe is successful in this litigation, does it intend to regulate drinking water and public water supplies of all Indians and non-Indians within the 1858 boundaries? A. At

[p. 322]

some point, yes." Was that your testimony?

A Yes.

Q Are you now changing that testimony?

A Not changing it in the sense that I needed to clarify, which I didn't at this time here, that it would be regulate - regulating drinking and - and drinking water, public water, as it pertains to Indians, the tribe - the tribal members.

Q So - so you are changing your testimony that - and you do not - and the tribe does not intend to regulate non-Indians, is that -

A I can't - I can't say. I can't testify to that until - the general council can only make that decision.

Q Does the tribe intend to - and that is a change in your testimony, isn't it, Mr. Chairman?

A Yes.

Q Does the tribe intend to regulate all solid waste of Indians and non-Indians within the 1858 boundaries, assuming it's successful in this litigation?

A My response is the same thing to that one.

THE COURT: Well, what is that response? I don't know.

A That it - we would regulate those areas as it pertains to the tribal members.

BY MR. GUHIN:

Q Do you recall your testimony starting on Page 44, Line 25:

[p. 323]

"Q. And does it intend to regulate all solid waste of Indians and non-Indians within the 1858 boundaries? A." Your answer: "Yes."

A Yes. That's right.

Q Did you give that testimony? Are you now changing that testimony?

A I'm trying to clarify my responses to those questions. Obviously, I didn't clarify it at this time here. I just gave a yes or no answer.

A [sic] And it, once again, it would - the tribe would seek to regulate these areas as it pertains to tribal members?

A Yes.

Q How about your intention as tribal chairman, do you as tribal chairman intend to seek authority for the tribe to regulate -

MR. ZEPHIER: Objection. Irrelevant, Your Honor.

BY MR. GUHIN:

Q - all solid waste [sic] of Indians and non-Indians within the 1858 boundaries?

THE COURT: Overruled. Go ahead.

A My opinions as chairman are not really binding unless - until general council, the tribe as a whole -

Q That's not my question, Mr. Chairman.

A Okay.

Q My question, Mr. Chairman, is whether you intend to seek

[p. 324]

it. We all know that presidents and chairmen seek things that they don't get. What's your intention as tribal chairman, what are you telling the Court today? Do you as tribal chairman intend to seek regulation of all solid waste of Indians and non-Indians within the 1858 boundaries?

A Only over the part that pertains to Indians, yes.

Q Okay. Are you telling me as tribal chairman you do not intend to seek regulation of solid waste of non-Indians within the 1858 boundaries?

A Over non-Indians, I couldn't say right now. Me personally, probably not. That -

Q And does the tribe intend to seek regulation of pesticides, discharges in the surface water, air quality, mining and hazardous waste?

MR. ZEPHIER: Objection. Compound, complex, and speculative, Your Honor.

THE COURT: Overruled, unless it was asked some other way in the testimony that you're looking at from the deposition.

MR. GUHIN: It was asked exactly that way, Your Honor.

THE COURT: I assumed so. So I'll overrule it so we can get on with it.

BY MR. GUHIN:

Q The precise question asked before, and I'll just be frank,

[p. 325]

and the same thing with regard to pesticides, discharges into the surface water, air quality, mining, and hazardous waste?

A My response is the same way as it applies to the Indians.

Q Okay. And so what you're telling us is you're changing your testimony with regard to non-Indians, but with

regard to non-Indians you don't know, and with regard to Indians your testimony would stand as put out in the deposition?

A Correct.

Q Why - why are you changing your testimony, Mr. Drapeau?

A Well, see, at the time when I made these comments, I was speaking primarily for myself, what I, Darrell Drapeau, would probably like to do, and I wasn't really at the time speaking on behalf of the tribe.

Q Well, Mr. Chairman, didn't you just tell us that you as Darrell Drapeau, tribal chairman, didn't know whether you would seek jurisdiction over non-Indians with regard to solid waste and these other matters, solid waste and underground storage, and now you're telling us at the deposition you were speaking as Darrell Drapeau. Which is it?

A See, at the time of this, of this deposition, I made the comments I did, but since then I am able to - I was able to - I acknowledged the fact that only general council can authorize some of the things that I said I would like to do.

Q Well, that doesn't answer my question. In your previous testimony just a few - just a few minutes ago you said, when I

[p. 326]

testified at the deposition, I was talking for myself, apparently, as tribal chairman, and now you're denying

that what you said as tribal chairman is what you said as tribal chairman.

MR. ZEPHIER: Objection. Asked and answered, Your Honor.

THE COURT: Overruled. Go ahead.

A Yes. At that time, I - I was - I said I was speaking at - as tribal chairman, which I am. Yet, even that - even though I'm tribal chairman, I still don't have that authority to speak on behalf or say what the tribe would or would not do unless I had a general council resolution authorizing me to - to do or not do something. And on these, quote, questions here there has never been a general council resolution passed authorizing me to say this. So that's why I'm saying that I was speaking for my own personal point and not from a - a - a tribal point.

BY MR. GUHIN:

Q Well, let's talk about solid waste. Is there a solid waste ordinance of the tribe, Mr. Chairman?

A Yes, there is.

Q And does that solid waste ordinance of the tribe purport to control the activities of non-Indians within the 1858 boundaries?

A I don't know if it pertains to non-Indians. I do know it's

[p. 327, ll. 1-17]

within the 1858 boundaries.

Q Well, let me ask you, Mr. Chairman, does that solid waste ordinance purport to affect the landfill at issue in this case?

A I don't -

Q Does the solid waste ordinance apply to the landfill that we've been talking about here today?

A I don't know.

Q You don't know?

A No, I don't.

Q So you don't know whether the tribe has an ordinance which is - which is relevant to or involved with the landfill that's at issue in this litigation, is that what you're telling us?

MR. ZEPHIER: Objection. Asked and answered.

THE COURT: Overruled.

A What I'm saying is that our ordinance, I do not know if it's, you know, if they're applying it to this specific landfill that we're talking about.

* * *

[p. 328, ll. 8-25]

* * *

BY MR. GUHIN:

Q Does the - is the tribe contending or are you as tribal chairman contending that the people that want to build the landfill on Mr. McBride's property are - will be in violation of some tribal ordinance?

A They'd be in violation of a tribal general council resolution.

Q So they would be in charge – are these people Indians or non-Indians who want to build this landfill?

A Non-Indians.

Q So is the tribe attempting to regulate non-Indians in the handling of solid waste within the 1858 boundaries as we stand here today?

A Based on the wording of that resolution, I think that's – it's possible to say that it is trying to regulate, yeah.

Q And so when I asked you the question, does the tribe intend to regulate all solid waste of Indians and non-Indians within the 1858 boundaries, what is your answer?

[p. 329, ll. 1-8, 13-25]

A My answer is that we're trying to regulate within the 1858 boundaries as it applies to Indians.

Q But not as to non-Indians?

A I can't say.

Q That's why – are non-Indians exempt from the – from the tribal ordinance regarding – regarding landfills within the 1858 boundaries?

A Yes. I think so, yeah.

* * *

BY MR. GUHIN:

Q Mr. Drapeau, has the tribe submitted an application to the EPA for solid waste enforcement within the 1858 boundaries?

A Yes, it has.

Q And is that limited to tribal or Native American solid waste facilities?

A I think it is, yes.

Q Can you tell me whether the – is it your intention following this litigation that the tribe will prosecute non-Indians for criminal violations on nontrust land in tribal court?

MR. ZEPHIER: Same objection on relevance, Your Honor. Speculation.

[p. 330]

THE COURT: Overruled.

A I can't say for certainty if we would or not.

BY MR. GUHIN:

Q Mr. Drapeau, referring to your deposition at Page 49, Line 15 – Page – Page 49, Line 8, do you recall this exchange: "Q. Is it your understanding that if you are successful in this litigation, a crime by a non-Indian against an Indian which is now heard in state court would go to federal court? A. No, it would go to tribal court. Q. The crime of a non-Indian? A. Right. Q. Does the tribe expect to prosecute non-Indians in its tribal court? A. Yes, we will. Q. You would? A. Yes." Do you recall that testimony?

A Yes.

Q And does that reflect what your present understanding of what the tribe's intentions are?

A The - the present intention, once again, is - is left up to general council of the tribe.

Q And so you're changing your testimony with regard to Page 49, Lines 8 through 16 at the deposition, is that right?

A I'm trying to clarify them, yes.

Q It's more than a clarification, isn't it, Mr. Chairman, it's a change?

A Right. Right.

Q And is it your intention that the United States would [p. 331]

prosecute federal crimes of non-Indians against an Indian if the tribe is successful, major crimes?

A For major crimes?

Q Yes.

A That would be a federal court.

Q Have you discussed that matter with the United States Attorney?

A No, I haven't. No.

Q Do you know where the United States Attorney is in this litigation?

A No, I don't. No.

Q Do you intend the tribe take jurisdiction of tribal members driving on nontrust lands within the 1858 boundaries if successful in this litigation?

A Did you say tribal members or -

Q Yes.

A Yes. Yes.

Q Is it your intention that the state not have jurisdiction of tribal members driving on lands which are not trust lands but within the 1858 boundaries if the tribe is successful?

A Yes.

Q Do Indians within the 1858 boundaries on nontrust land presently pay a state sales tax?

A I think they do, yes.

Q Is it your intention that after the litigation that the [p. 332]

Indians would not pay that sales tax?

A Once again, what I want may not be what the tribe says, so it's -

Q Is it the intention of the tribe that after this litigation that the Indians would not pay the sales tax?

A I couldn't say. So -

Q Mr. Drapeau, referring to Page 51 of your Deposition, Line 12: "Q. You don't know. How about taxation, is the tribe going to claim that tribal members can't be, aren't subject to sales tax on nontrust lands within the 1858 boundaries if it's successful? A. I think that's been our position all along, yeah. Q. And at present, though, when you go into a store in Lake Andes you pay a sales tax,

don't you? A. Right. Right. Q. You do pay a sales - state sales tax? A. Right"

And so you testified before that it's been your position all along - it's been our position all along that the - that the tribal members should not pay the sales tax?

A Yeah, on that one I can answer in the affirmative, yes, based upon my discussion with other tribal members who are opposed to paying sales taxes, yet they go ahead and pay them.

Q Okay. You've - you've said that you've discussed that with other tribal members. Is there a general council meeting and general council resolution on which you can base your opinion?

A Not within my - you know, since I've been in office, I [p. 333]

haven't seen any, but once again, it's based on discussions with tribal members.

Q Okay. So when you told us earlier that the only way that the tribe could have a position is through the general council meeting, that's not true, is it?

A What's that?

Q When you told us earlier that the only way that the tribe had a position, the only way you were willing to say the tribe had a position is after there had been a resolution of the tribal council, the tribal - yeah, the tribal council, that's not true, is it?? [sic]

A That is true. That - because that general council resolution is the official statement of the - of the tribe.

Q But there is no official position with regard to the state sales tax, is that right?

A On this one, not that I can recall. I'm certain that they would pass one, though, if they wanted to.

Q But they haven't?

A Not that I know of, no.

Q Is it appropriate to say that assuming the tribe is successful in this litigation it is going to claim general civil and criminal jurisdiction over non-Indians within the 1858 boundaries?

A Probably civil jurisdiction. The criminal, I really don't know.

[p. 334]

Q So the - so the tribe probably will claim general civil jurisdiction over non-Indians within the 1858 boundaries if this is successful?

A In the areas where it could, yes.

Q What do you mean "in the areas where it could"?

A Meaning that something coming from general council.

Q Do you recall your testimony on January 26th, Page 55 of your deposition, Line 7, the question: "Would it be appropriate to say that assuming the tribe is successful, it's going to claim general civil and criminal - general civil jurisdiction over the non-Indians within the 1858 boundaries? A. Right. Q. And criminal jurisdiction except that it goes to federal court? A. Right. Q. That being over

nonmembers again and within the entire 1858 boundaries? A. Right"

Were those your answers?

A Those were my answers, yes.

Q And are you changing your testimony?

A As it applies to suing tribal members.

Q Has the tribe made any – have you made any estimate of how many additional – of the additional costs it would take to cover all the environmental regulations, law enforcement, civil and criminal jurisdiction and all the other responsibilities that the tribe may undertake if it's successful?

A I personally haven't made a – a – an estimation of that, no.

[p. 335]

Q Well, as tribal chairman, do you know whether the tribe has made any such estimate?

A There's been one – one estimate from the EPA in – in regards to the cost of, you know, of recycling program, that type of thing.

Q So for one part of one environmental program there has been one estimate made?

A Yeah, yeah. that's –

Q And with regard to the other matters we've been talking about, underground storage tanks, pesticides, discharges into surface water, air quality, civil jurisdiction and criminal jurisdiction and so on, there is no estimate at all, is that right?

MR. ZEPHIER: Same objection under relevance, Your Honor, to the whole line of questioning here.

THE COURT: Overruled.

A There's been an estimate, and that estimate was given as part of a – as I remember, it was a – progress report, and at that point I was informed by our tribal EPA person that there was a 600,000 dollar figure is what was – was told to me.

Q An EPA – excuse me, an EPA figure – an EPA person told you that?

A A tribal EPA person.

Q A tribal EPA person?

[p. 336, ll. 1-23]

A Yeah.

Q And what was the tribal EPA person estimating?

A What it would cost to do like a recycling program and –

Q Okay. And with regard to those other programs we just talked about, there has been no estimate, is that right?

A No, not that – no.

Q Do you know how many police officers the tribe now has?

A We've got roughly four or five.

Q And do you know how many police officers the tribe would need if it got the jurisdiction it is seeking here?

MR. ZEPHIER: Same objection.

THE COURT: Overruled.

A Probably not much more than what we have now. I know that in the past we discussed, you know, figures and numbers of what we thought the number of police officers would be needed to provide adequate law enforcement protection, and I think at one time the tribe even talked about having two officers in each community.

Q Is that two per shift?

A Yeah.

Q And that comes to about 30 people total, doesn't it?

A Yeah. I think - I think that's what we talked - we discussed, yeah.

* * *

[p. 339, ll. 16-25]

* * *

Q Has the - has the casino erected signs telling people where the casino is so they can get to it?

A Yes.

Q And the tribe wants people to know where the casino is, doesn't it?

A That's right.

Q Does the tribe have any signs on any highways to show that a non-Indian is entering the boundaries of a reservation?

A There's none.

Q We've had some discussion about the term "reservation."

[p. 340, ll. 1-5, 10-22]

What meaning does the term "reservation" have to you?

A Reservation, it's a homeland.

Q And the Yankton area is your homeland whether there are legal boundaries there or not, is that right?

A Yeah.

* * *

BY MR. ZEPHIER:

Q Mr. Drapeau, you are not a legal expert, are you?

A No.

Q You don't have any special training in interpretation of any legal ordinance as such, do you?

A No.

Q Much of what you've said today or at the deposition which Mr. Guhin - Guhin has referred to were actually statements made on your own behalf, is that correct?

A That's right.

Q Regarding the solid waste land ordinance that was referred to by Mr. Guhin, have you actually read that ordinance, sir?

A I've - not thoroughly, no. No.

* * *

[p. 344, ll. 24-25]

* * *

Q And you understand your tribal solid waste ordinance not to affect non-Indians, is that right?

[p. 345, l. 1]

A I don't believe it does, no.

* * *

Titus Marks Trial Testimony

[p. 347, ll. 19, 23-25]

* * *

BY MR. ABOUREZK:

* * *

A My name is Titus Marks, and I live in Aberdeen, South Dakota. . . .

Q And where do you work, Titus?

[p. 348, ll. 1-8, 22-24]

A I work for the Bureau of Indian Affairs, Aberdeen Area Office.

Q What is your responsibility there?

A I am known as a realty specialist, and it is part of my duties to provide real estate management duties whether it be tenure management, acquisition, disposal or anything associated with the right-of-way for the Indian tribes under the Aberdeen Area Office.

* * *

Q How long have you worked as a real estate specialist with the BIA?

A About 18 years, approximately.

* * *

[p. 349, ll. 2-11]

* * *

Q What tribes do you have responsibility for at the Aberdeen Area Office?

A There's about 15 tribes, but those that I am responsible for, Yankton Sioux Tribe would be one of them.

Q So, in - in your capacity as realty officer, you deal with real estate on the Yankton Sioux Reservation?

A Yes, I do.

Q Okay. Are you aware of the current boundaries of the Yankton Sioux Reservation?

A Yes, I am.

* * *

[p. 355, ll. 17-25]

* * *

Q Now, are you aware of the - how did you become aware of the boundaries of the Yankton Sioux Reservation?

A It's part of my duties as a realty specialist to know the boundaries of a particular reservation that I serve.

Q And what duties require you to know the boundaries?

A We will take land into trust, "we" meaning the Bureau of Indian Affairs and United States, for that tribe, and there are certain regulations that are applicable to a reservation that will either permit us or not permit us to take land into trust

[p. 356, ll. 1-8, 25]

for that particular reservation.

Q So because of that you have to know which - what is outside of the boundaries and what's inside?

A Yes. We have to know where the exterior boundaries of that reservation is at.

Q Does the Bureau of Indian Affairs then consider the 1858 boundaries to still be intact today?

A We still recognize it as being intact, yeah.

* * *

Q Okay. Is it the position of the Aberdeen Area Office of

[p. 357, ll. 1-2, 8-16, 22-25]

the Bureau of Indian Affairs that the boundaries of the Yankton Sioux Reservation exist today as they did after 1858?

* * *

You can answer that, Titus.

A Yes, we do.

Q Now, let me ask you one other question. If the Washington office of the Bureau of Indian Affairs had a different opinion about the boundaries, would they allow your office to say what these boundaries are?

A No, they wouldn't.

Q They wouldn't let you disagree with them, would they?

A No, they wouldn't.

* * *

Q When you worked for the Yankton Sioux Tribe before your entering into the BIA, did you become familiar with the boundaries of - the 1858 boundaries of the Yankton Sioux Reservation?

[p. 358, ll. 1-12, 17-25]

A Yes, I did.

Q And how so? What was - under what conditions?

A Like I said before, I worked with the employment assistance program, and it was the tribe's policy at that time that the tribal members residing within their exterior boundaries of that reservation would get prior service, and if something was left over, then those that lived outside the boundaries what was designed as a service area within be serviced.

Q And, Mr. Marks, if congress told you through legislation that these were not the boundaries of the Yankton Sioux Reservation, would you still be treating them as boundaries?

A No, we wouldn't.

Q Mr. Marks, good afternoon. Is it accurate to say that your views reflect only the views of the realty office of the Aberdeen BIA?

A Only the realty office?

Q Yes.

A To some extent, yes.

Q Can you answer that with a yes or no?

A Yes.

Q It is accurate to say that your views here today reflect [p. 359]

only the views of the realty office of the Aberdeen BIA, is that correct?

A The Aberdeen BIA?

Q Yes.

A Yes.

Q And you don't know anything about how the BIA treats its Yankton area otherwise, do you?

A In what way?

Q Beyond the realty, do you know anything?

A You mean do I have any other expertise in other areas of the Bureau of Indian Affairs, is that the question?

Q That's right.

A I have no expertise in other areas.

Q And when you - when you said that it's the view of the realty office that the Yankton Reservation was not disestablished in 19 - or by the act of 1894, what did you base that on?

A When -

Q What did you base that on?

A Could you repeat the question.

Q Sure. When you - when you indicated that the - that the Yankton Reservation still exists as it did in 1858, what did you base that on?

A We haven't seen anything to the contrary.

Q You haven't seen anything to the contrary?

[p. 360, ll. 1-12]

A Right.

Q Are you familiar with the case of Perrin versus United States?

A What is the case?

Q Perrin versus United States.

A No, I'm not.

Q Are you familiar with the cases of State v. Williamson or State v. Thompson?

A No, sir.

Q Are you familiar with any case law on the subject of the diminishment or disestablishment of the Yankton Reservation?

A No.

[p. 365, l. 22]

BY MR. GUHIN:

[p. 367, ll. 19-24]

Q Did you rely upon anything else – did you rely upon anything else to determine that the Yankton Reservation has not been disestablished?

A I have reviewed a couple of field solicitor's – and we have been assured by our Washington office that the Yankton Sioux Reservation has not been disestablished.

Ken Kredit Trial Testimony

[p. 581, ll. 11-25]

Q You indicated that the Yankton Sioux Tribe had a representative at the first organizational meeting of the Southern Missouri District. How long, if you can tell, from your records, did the Yankton Sioux Tribe have an individual present at Southern Missouri Association meetings?

A Yes. We had a representative from the Yankton Sioux Tribe at our meetings until May of 1993. So about 15 months, they were very active members.

Q Okay. And was the person that was there on behalf the Yankton Sioux Tribe up until May of 1993 allowed to vote in association meetings?

A Yes.

Q And during this time, did the association vote on selecting the Ken McBride site as the site for this proposed landfill?

A Yes.

[p. 582, ll. 1-7]

Q And do your records indicate that the person from the Yankton Sioux Tribe voted in favor of this particular site?

A Our minutes record either unanimous vote or there was nobody abstaining.

Q And at the time that that particular vote was taken, was there a representative of the Yankton Sioux Tribe there?

A Yes.

[p. 584, ll. 13-18]

Q If you know, Mr. Kredit, do you have a figure as to approximately how much money the Southern Missouri District has spent to date in building this proposed facility in round numbers?

A Round numbers, I think we have spent approximately 250,000 to 300,000 dollars.

[p. 589, ll. 11-25]

Q You were aware at some point, weren't you, that the tribe was opposed to the Ken McBride site?

A In my minutes, May of 1993, when Paula Butler was still a delegate from the Yankton Sioux Tribe, we did not know about it.

Q You did not know they were opposed to it?

A At that time we never -

Q At some point you became aware of it?

A At that time, yes, at that particular meeting.

Q In May of 1993?

A Yes.

Q When you said somebody was there from the tribe voting for the McBride site, do you know who that was?

A Paula Butler.

Q And you - was that vote recorded or was it a voice vote

[p. 590, ll. 1-19]

or -

A Voice.

Q Voice vote?

A Yes.

Q You don't know how she voted then?

A No, I don't.

Q You don't know if she kept her hand down?

A No, I don't.

Q Do you know if she had a resolution from the tribe authorizing her to either vote or not vote?

A No, I don't.

Q Do you know if she had a resolution from the tribe to attend the meetings?

A No, I don't.

Q How did you know she was a representative of the tribe then?

A For one thing, she said so.

Q She only told you?

A She told us.

Jack Soulek Trial Testimony

[p. 645, ll. 8-25]

Q Okay. Do you know how many acres of trust - trust land there are within Charles Mix County?

A I think there are probably - approximately 40,000 acres of trust land.

Q Does Charles Mix County have a zoning ordinance?

A Yes. It was just put into effect.

Q Okay. And can you tell us what land the Charles Mix zoning ordinance covers?

A Only state land.

Q You mean only - are you speaking in relation to Indian, non-Indian land?

A We have no jurisdiction over tribal trust lands.

Q Okay. Does the Charles Mix zoning ordinance, is that enforceable and enforced against non-Indian land within Charles Mix County?

A Yes.

Q Is it - is the Charles Mix zoning ordinance enforced against trust land in Charles Mix County?

[p. 646]

A No.

Q In your capacity as county commissioner, do you know whether or not the county and city officers enforce state criminal law on non-trust land?

A Yes.

Q And is that within the 1858 boundaries?

A Yes.

Q And do they enforce that state criminal law against both tribal members and non-tribal members on non-trust land?

A Yes.

Q And so that would be true, for example, with a stop of a DWI - excuse me. Driving while intoxicated suspect who is a tribal member and on non-trust land, where would that person be prosecuted?

A In state court in Lake Andes.

Q Okay. Do you know whether the tribe enforces any of - do you know whether the tribe enforces its criminal ordinance against tribal members on non-trust land within the 1858 boundaries? Would you like me to repeat that?

A Yes, uh-huh.

Q Do you know whether the tribe enforces its criminal ordinances on non-trust land?

A No.

Q It does not?

A No. Not on non-trust land.

[p. 647]

Q Is that the kind of thing that if the tribe were doing that, were taking that action, would you find out about it as a county commissioner?

A Immediately.

Q With regard to game and fish regulations, do you know whether the state enforces its regulations on tribal members within non-trust lands?

A On non-trust lands? Yes, uh-huh.

Q Does it?

A Yes, it does.

Q Do you know whether the tribe has ever attempted to enforce its game and fish regulations off of trust land within the former boundaries?

A No.

Q It hasn't?

A No, not - on state land, no.

Q Do you know - can you tell me who provides fire protection in the county?

A There are districts.

Q Special governmental districts?

A Yes.

Q Okay. And fire districts?

A Fire district.

Q Do you know how many districts there are within Charles Mix County?

[p. 648]

A I think there is five districts in Charles Mix County.

Q And do those districts provide fire protection to trust land and non-trust land?

A Yes. Yes, they do.

Q Do you know whether any of the fire districts have made any special provisions with regard to the tribal casino?

A Talking to the fire district, they have went on to inspect the casino of where the outlets are, exits, what is in there in case a fire broke out to - to - to go up there and help fight that fire.

Q Do you know how many uniformed county law enforcement officers there are?

A County?

Q Yes. Uniform county law enforcement officers.

A We have a sheriff and three deputies.

Q Do you know how many uniformed officers there are at Lake Andes, for the City of Lake Andes?

A Two.

Q And Platte?

A I believe it's two in Platte.

Q And at Wagner?

A Three, if not four.

Q And do you know how many - how many officers of the highway patrol are stationed within or operate within Charles Mix County?

[p. 649, ll. 1-9]

A I believe two.

Q And if the county needs assistance, can it get assistance from neighboring counties?

A Yes.

Q County law enforcement?

A Yes, uh-huh.

Q And do your county officers provide assistance to BIA officers on request?

A Yes, on request.

* * *

[p. 652, ll. 15-24]

* * *

Q How would your [sic] characterize the relationship of the tribe and county prior to this litigation?

A My feelings with the tribe have been a close relationship. We have to work together.

Q And has the county attempted to enter into a cross deputization agreement with the tribe in the past?

A It was talked about, yes.

Q Does the tribe - is it your understanding that the tribe wants or does not want such a -

A Did not want it at the time.

* * *

[p. 656, ll. 20-25]

* * *

Q Was Steve Cournoyer chairman of the tribe at the time?

A I - I just can't tell you for sure, Jim, if he was or not.

Q Okay. You said that one time you talked to Steve Cournoyer when he was chairman about site selection for the landfill. Now, tell me again what he said to you, Jack.

A He said that they did not want a landfill built on tribal

[p. 657, ll. 1-18, 24-25]

land - and I appreciated Steve being honest with me - of the tribal land that was owned at this - at that time.

Q You said that Paula Butler and Louis Archambeau had come to the water association meet - or the landfill association meetings. How many times did Louie come?

A Louie came - I recollect twice for sure that I knew Louie was there.

Q And he was a member of the tribal - the business and claims committee at the time?

A Yes. The council or -

Q Do you know whether or not Louie had any resolution from the tribe to represent the tribe there?

A I couldn't tell you at that time. I just took it - him being on the council and being there, I just took it that -

Q Did he tell you he was there representing the council - business and claims committee? Sorry.

A No, I don't believe he did, Jim. I can't remember, recall that.

* * *

Q Was the tribe a member of the association?

A When we started - could I explain a little bit on it?

[p. 658]

Q Please, yes.

A When we started, Ken Kredit brought it up that we - the city should pay five dollars per head.

Q Per person?

A Yes. To join the association.

Q Let me stop you there. Five dollars per person per population of the city?

A Yeah.

Q Okay. Go ahead.

A And they put their - cities put their money into it, and the tribe put in five dollars into our association. We -

Q Was that, Jack, a total of five dollars?

A At that time, yes.

Q That would have been Paula Butler's membership, right?

A No, the tribal membership because we made it clear that every entity had to put in five - money into this association.

Q When you say five dollars per person -

A Yes.

Q Now, how many members of the tribe were there at that time?

A How many members of the tribe that was on -

Q No. How many members or - were in the tribe at that time? What was the tribal membership, if you know?

A I couldn't tell you at that time.

Q Well, you have heard -

A Approximately around 22,000 - 2200, something like that.

[p. 659]

Q Darrell Drapeau says about 3,000. That would make it a membership of 15,000 for the tribe, is that right?

A Yes.

Q 15,000 dollars?

A Yes, if it's 3,000.

Q Did they give you 15,000 dollars?

A No, they didn't.

Q So the tribe was not then a member, was it?

A I felt they were.

Q Jack, if - sorry. You have more?

A I felt, Jim, that I was responsible for the people of Charles Mix County, and I wanted everyone to have a voice within this association. That was the way it was set up to be. And I wanted the tribe to join it and have a voice and a vote into this association.

Q Do you know anything about the governmental processes of the Yankton Sioux Tribe, Jack?

A Not that familiar with it, Jim, no.

Q Let me ask you specifically then, do you know who negotiates agreements with the tribe?

A Specifically who negotiates -

Q Yes.

A No.

Q Do you know who approves of agreements for the tribe?

A Okay. My understanding is the approval of it, the general.

[p. 660, ll. 1-24]

council.

Q And do you know who the general council consists of?

A The people?

Q The adults in the tribe, right.

A Yes.

Q Do you know if there was a resolution from the general council approving membership in the Southern Missouri Waste Management Association?

A At that time I couldn't tell you.

Q You had never seen one?

A At that time I didn't know how their government worked. I thought that the council represented the people like commissioners. You represent people. That's how -

Q You know now it's different? You know now it's different?

A Yes.

Q But you never saw a resolution from the tribe of any sort, did you?

A No.

Q And yet - and they only paid 5 dollars instead of 15,000 dollars?

A Yes.

Q And yet you were assuming that they were members of the association?

A Yes.

* * *

[p. 682, ll. 1-22]

Q Mr. Soulek, is the town of Dante in southern Charles Mix County within the original 1858 boundaries of the Yankton Sioux Reservation?

A Yes.

Q And is the City of Wagner within the 1858 boundary lines of the original Yankton Sioux Reservation.

A Yes.

Q And is the township of Ravina within that same area?

A Yes.

Q And is the City of Lake Andes within that same area?

A Yes.

Q The City of Marty is within the same area?

A Yes.

Q The town of Marty. Okay. And how about the newest municipal in South Dakota, that being Pickstown?

A Yes.

Q And do all of those various towns and communities maintain their own city governments?

A Yes.

Q And do they maintain their own city infrastructure such as water and sewer and streets and all this and that?

A Yes.

* * *

[p. 692, ll. 3-20]

* * *

Q And you see new businesses springing up in Wagner?

A Yes.

Q For example, the Alco Discount Store?

A Yes.

Q Do you have any idea of any other businesses that are springing up in Wagner?

A I would - I won't say if there - I'm sure there is, Jim, because of the new motel. Like you said, Alco, gas station popped up there because of the five year tax exemption that we have in Charles Mix County.

Q Isn't there a new food shop and Amoco station in Pickstown?

A Yes, uh-huh.

Q And in your view, does that come from the presence of the casino as well?

A I'm sure it helps, yes, uh-huh.

Q So the tribe has been a good neighbor, haven't they?

A I can't - no, they have not been a bad neighbor, no. They are good neighbors.

* * *

David Raysor Trial Transcript

[p. 694, ll. 12-25]

* * *

Q Has the - has your division provided any grants or loans to entities within the former boundaries of the Yankton Sioux Reservation?

A Yes, we have.

Q And could you generally describe the projects and how much money was provided?

A In Lake Andes, we have provided Lake Andes with a 91,000 dollar EPA grant which we administered for the U.S. EPA, and a 30,000 dollar state grant for their waste water treatment facility. We have provided the City of Wagner 554,000 for their waste water treatment facility, again, a grant that we administered for the U.S. EPA. We have provided the City of Lake Andes 4,000 dollars to meet the requirements of the Resource Conservation Recovery Act, RCRA, for closure of their

[p. 695, ll. 1-12]

landfill.

We have provided the town of Ravina 30,000 dollars for their water system so they can meet the Safe Drinking Water Act. We have also provided money to Randall Rural Water System, 50,000 dollars for Randall for Safe Drinking Water Act, activities on their rural water system. And we have provided technical assistance grants to both the Charles Mix County Conservation District, I think we provided them two grants totally between 7 and 8 thousand dollars for non-point source activities related to activities in and around the Lake Andes watershed, and 22,000 dollars to the Randall RCWD for non-point source activities within that county.

* * *

Douglas Miller Trial Transcript

[p. 710, ll. 17-25]

* * *

Q Mr. Miller, are you familiar with the location of the former Yankton Sioux Reservation?

A Yes, I am.

Q And does the department regulate any storage tanks within that area?

A Yes, we do.

Q And by regulate, they are registered with you?

A Yes, they are.

Q And would you just generally describe how many tanks and

[p. 711, ll. 1-5]

what kind they are.

A There are roughly 70 registered underground storage tanks at I believe it's 28 facilities. And aboveground storage tanks, there is, if I recall correctly, ten facilities, with roughly 30 aboveground storage tanks.

* * *

[p. 712, ll. 16-23]

* * *

Q There is an error on that particular list, is there not, Mr. Miller?

A Yes, there is.

Q And would you describe that error, please.

A There is a spill report here for the community of Geddes, and Geddes is not within the area of question here.

Q So other than that error, are there any other errors?

A Not that I am aware of.

* * *

Brad Berven Trial Testimony

[p. 718, ll. 1-23]

Q Has the Department of Agriculture in these areas that you have discussed, pesticide, fertilizer, et cetera, have you regulated those type of activities within former boundaries of the Yankton Sioux Reservation?

A Yes.

Q And could you generally describe the type of regulation you are talking about, what you have done.

A Well, within the area in question, there's businesses that are involved in the types of activities that we regulate; grain elevators, feed manufacturing businesses, fertilizer distributorships, companies involved in the - in the application of pesticides, the distribution of pesticides. So those companies that are involved in those activities have been regulated by the programs that I administer.

Q You know that there are, for example, fertilizer licenses that you have issued in that area?

A Yes.

Q Has the department also been regulating pesticide use and handling in that area?

A Yes.

Q And have you take [sic] enforcement actions that you are aware of within the boundary of the former Yankton Sioux Reservation?

A Yes.

* * *

[p. 719, ll. 7-19]

* * *

Q Does the environmental - the federal Environmental Protection Agency have a companion set of statutes with regard to pesticides that the Department of Agriculture also has statutes concerning?

A Yes, they do.

Q And does the Department of Agriculture have enforcement authority from EPA over those areas?

A Yes. The Department of Agriculture has been granted primary enforcement responsibility for the federal requirements.

Q Did the Environmental Protection Agency exempt Indian country when it delegated you primary enforcement authority?

A No.

* * *

[p. 720]

Q Mr. Berven, you said the EPA did not exempt Indian country from when they granted you the right to regulate the matters that you regulate. Is that correct?

A Correct.

Q Then you can operate all through the Yankton Sioux Reservation without any problem, can't you?

A Correct. We have not distinguished the area from any other.

Q Do you know what the boundaries are of the Yankton Sioux Reservation?

A I am familiar with what is the - the disestablished - I don't know the proper terminology, but whatever the past boundary was.

Q Where are they located?

A Basic - in a real basic description, the southern portion of Charles Mix County.

Q Do you know where the northern boundary is?

A Not exactly, no.

Q Can you give me an idea within two miles of where it might be?

A No.

Q Five miles?

A No. The only thing that comes to mind would be the county line.

Q Well, there is no county line on the northern boundary, I

[p. 721, ll. 1-3]

might tell you. Is there a sign that tells you when you're within the boundaries of the Yankton Sioux Reservation?

A Not that I am aware of.

* * *

Ron Catlin Trial Testimony

[p. 723, ll. 19-22]

* * *

DIRECT EXAMINATION

BY MR. GUHIN:

Q Would you state your name, please.

A Ronald P. Catlin.

* * *

[p. 724, ll. 1-4]

Q And who is your present employer?

A South Dakota Department of Game, Fish and Parks.

Q How long have you worked for Game, Fish and Parks?

A Approximately 31 years.

* * *

[p. 727, ll. 16-25]

* * *

Q In your position, have you ever known the Yankton tribe to attempt to take jurisdiction over non-Indians on non-trust lands within the former boundaries with regard to game and fish matters?

A No.

Q In your position as the division staff specialist, have you every [sic] known the tribe to exercise jurisdiction over tribal members on non-trust land?

A Over tribal lands?

Q Tribal members on non-trust -

[p. 728]

A I don't have personal knowledge of that, no.

Q Does the State have any agreements with the Yankton Sioux Tribe regarding hunting and fishing?

A Yes, they do.

Q And what do they - what kinds of lands did the agreement - is there - how many agreements are there?

A It pertains to - the agreement pertains to trust lands of the Yankton Sioux Tribe.

Q Does it pertain to non-trust lands?

A No.

MR. GUHIN: I don't have any further questions.

THE COURT: Cross examine.

CROSS-EXAMINATION

BY MR. ABOUREZK:

Q Mr. Catlin, do you - are your responsibilities pretty much state-wide in South Dakota?

A Yes.

Q Do you - are you familiar with what your department does on the Pine Ridge Reservation?

A Yes.

Q Do you enforce your department's regulations on that reservation?

A On non-trust lands, yes.

Q And do you - I notice you said former Yankton Sioux Reservation boundaries. Do you use the same term with respect

[p. 729]

to Pine Ridge?

A No.

Q Why is that?

A Because we consider Pine Ridge an enclosed reservation.

Q But you still regulate your regulations - you regulate the area where it's non-precedent?

A That's right.

Q And the same is true with Yankton, isn't it?

A As far as the trust land itself, yes.

Q What been [sic] Cheyenne Eagle Butte?

A Yes, that is an enclosed reservation.

Q And you regulate on the non-trust land there?

A Yes.

Q And what about Crow Creek?

A Same situation.

Q Same thing. Fort Thompson? Same situation?

A Fort Thompson is Crow Creek.

Q Rosebud?

A Same situation.

Q Lower Brule?

A Lower Brule has a specific agreement that regulates that activity that is different than how we regulate the other enclosed reservations.

Q So really doesn't matter whether you think it's a former reservation or not, you still regulate on non-trust land on all

[p. 730, ll. 1, 6-25]

Indian reservations in South Dakota, am I correct?

* * *

Q You regulate - you regulate - your department's regulations, you enforce those on all Indian reservations on all non-trust land, is that right?

A We do. I'm not - that's kind of - if I can qualify that a little bit.

Q Please do.

A When you say we do it exactly the same, they are not exactly the same, but how we treat those, we treat - we do enforce the non-trust lands on all the areas for non-member activity.

Q Non-tribal member activity?

A Right.

Q Have you ever purchased a tribal hunting, fishing license from any reservation?

A Yes.

Q Which reservation?

A Lower Brule.

Q That means you respect their regulations up there, their own - their own regulations?

A We were going to be hunting on trust lands, and that's the

[p. 731, ll. 1, 17-21]

tribe, that happens to be under a special hunting agreement.

* * *

Q Now, turning your attention now to non-trust land within the former Yankton Reservation, does the State regulate tribal members on non-trust land within the former Yankton reservation?

A Yes, they do. We do.

[p. 733, ll. 11-25]

* * *

Q You - you do regulate tribal members on fee patent land in Yankton?

A Yes.

Q That's pursuant to the agreement you have?

A It's not directly, though. It's not addressed in that agreement.

Q It's not addressed at all?

A No, it wasn't addressed.

Q Has the Yankton Sioux Tribe objected to that particular jurisdiction?

A Not that I am aware of that I can recollect to.

Q Are you aware that there is a case in state court now where the state Game, Fish and Parks has arrested two tribal members for fishing – hunting, fishing violations?

A I'm aware that we have arrested tribal members. As far as

[p. 734, ll. 1-19]

what – where they were – and there have been some of those cases probably.

Q There is one currently now. Do you know about that case?

A I'm not sure which one that is, but I know there was – this was a fishing case?

Q Yes.

A I am aware that there – I don't know the names or the specifics of those particular cases.

Q And are you aware that the tribe is objecting to your jurisdiction in that respect?

A I wasn't aware of the status of those two cases right at the present time, no.

Q But do you know the nature of the case? Do you know the tribe is objecting to the jurisdiction?

A I do if you are telling me so. I haven't received that formal notice of the status of those cases.

Q I represent that to you.

A Okay.

Q You don't disagree with that?

[p. 735, ll. 4, 18-23]

BY THE COURT:

Q Are there any other reservations in the State of South Dakota where the Game, Fish and Parks is enforcing the South Dakota rules and regulations with regard to game and fish against tribal members on non-trust lands other than Yankton Reservation?

A Sisseton-Wahpeton would be a similar situation.

[p. 736, ll. 11-25]

Q Now, when you are talking about the Yankton Sioux Reservation in common parlance, you don't refer to it as the former Yankton Sioux Reservation; you just talk about the Yankton Reservation, don't you?

A No. I don't use the terminology Yankton Reservation.

Q What do you use?

A I use either the former reservation or I just talk about Charles Mix County, or occasionally the former.

Q How long has that been true?

A I really, Your Honor – I don't recall using maybe the Yankton Reservation, you know, for a lot of years. And I guess at some point formerly we may have been advised

by maybe a previous governor that in referring to this particular area, you know, it is the former -

Q Which governor was that?

[p. 737, ll. 1-19, 25]

A I believe it might have been Governor Janklow.

Q Last time he was governor, not this time?

A Last time. First time around.

THE COURT: My questions give rise to questions of anybody?

MR. ABOUREZK: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. ABOUREZK:

Q Was there a directive issued by Governor Janklow with respect to using terminology on the Yankton Reservation?

A There may have been, as I recall, maybe a memo.

Q You have seen the memo?

A I did see the memo.

Q Do you recall the context of the memo or what it said?

A Not really. It was very brief. It just said in referring to this particular document, that it's the former.

Q He said you should use the terminology former Yankton Sioux Reservation?

A That's my recollection.

* * *

Q Mr. Catlin, are you aware that part of Gregory County is

[p. 738, ll. 1-17]

within a - used to be within a reservation?

A Yes.

Q And, for example, then do we treat the - used to be within the Rosebud Reservation, is that right?

A Yes.

Q And with regard to non-trust land within Gregory County, within the former boundaries of the Rosebud Reservation, does - is state law applied against tribal members?

A Yes. You are talking about - okay. Yes. Yes.

Q So you understand what I'm saying?

A Yes. On fee - on non-Indian land.

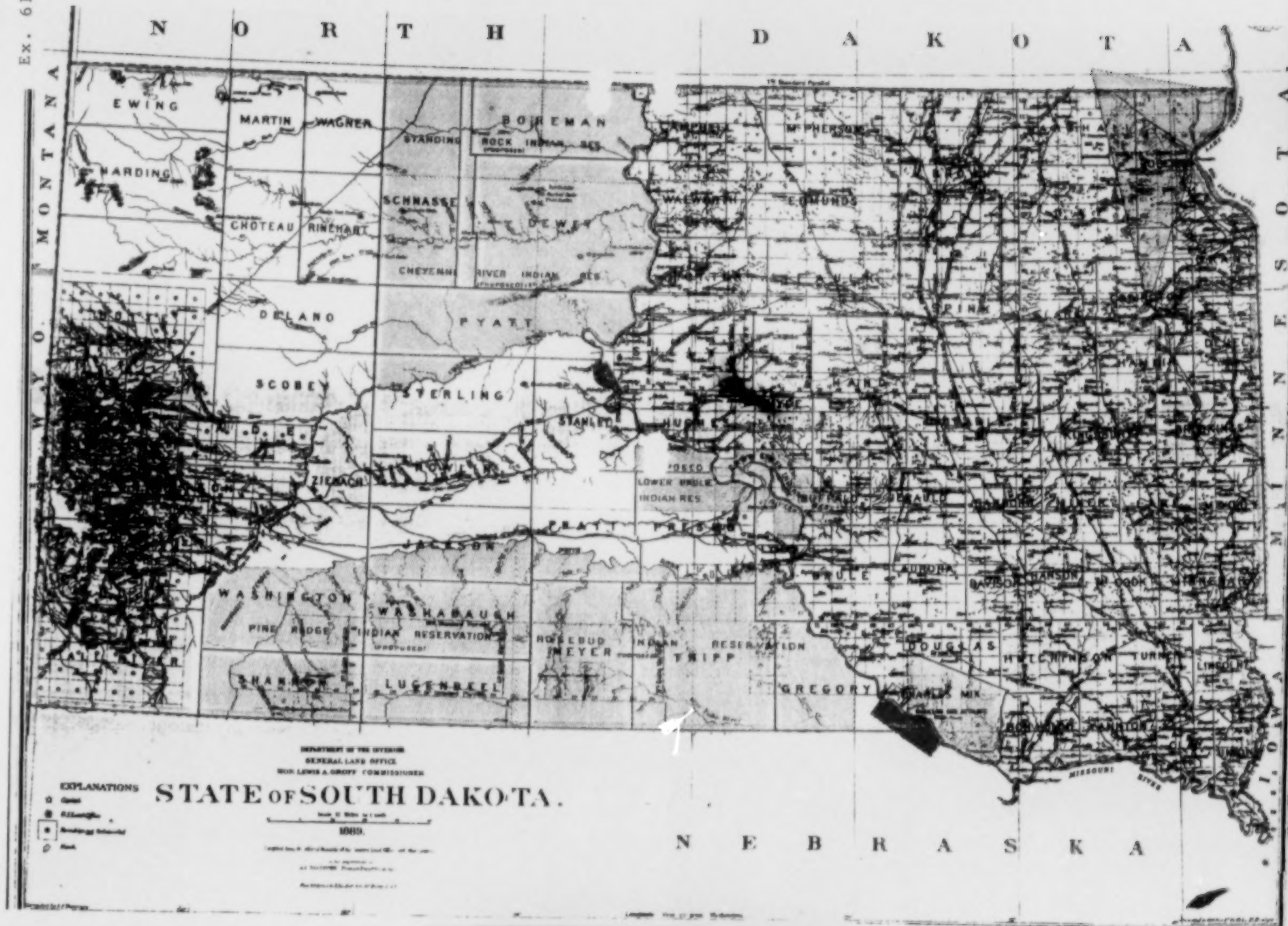
Q Yes. Former reservation boundaries on non-trust land, state game and fish law is applied against -

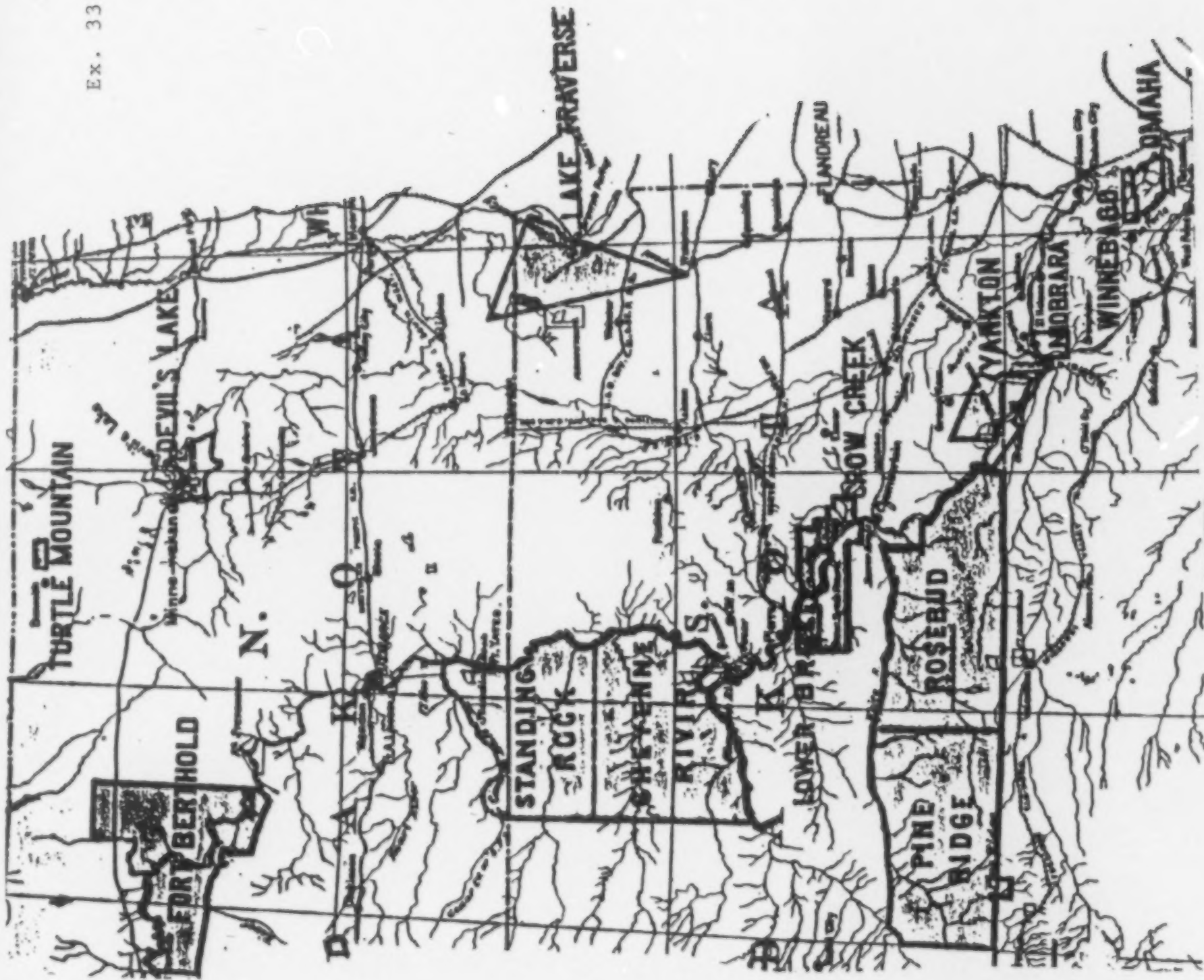
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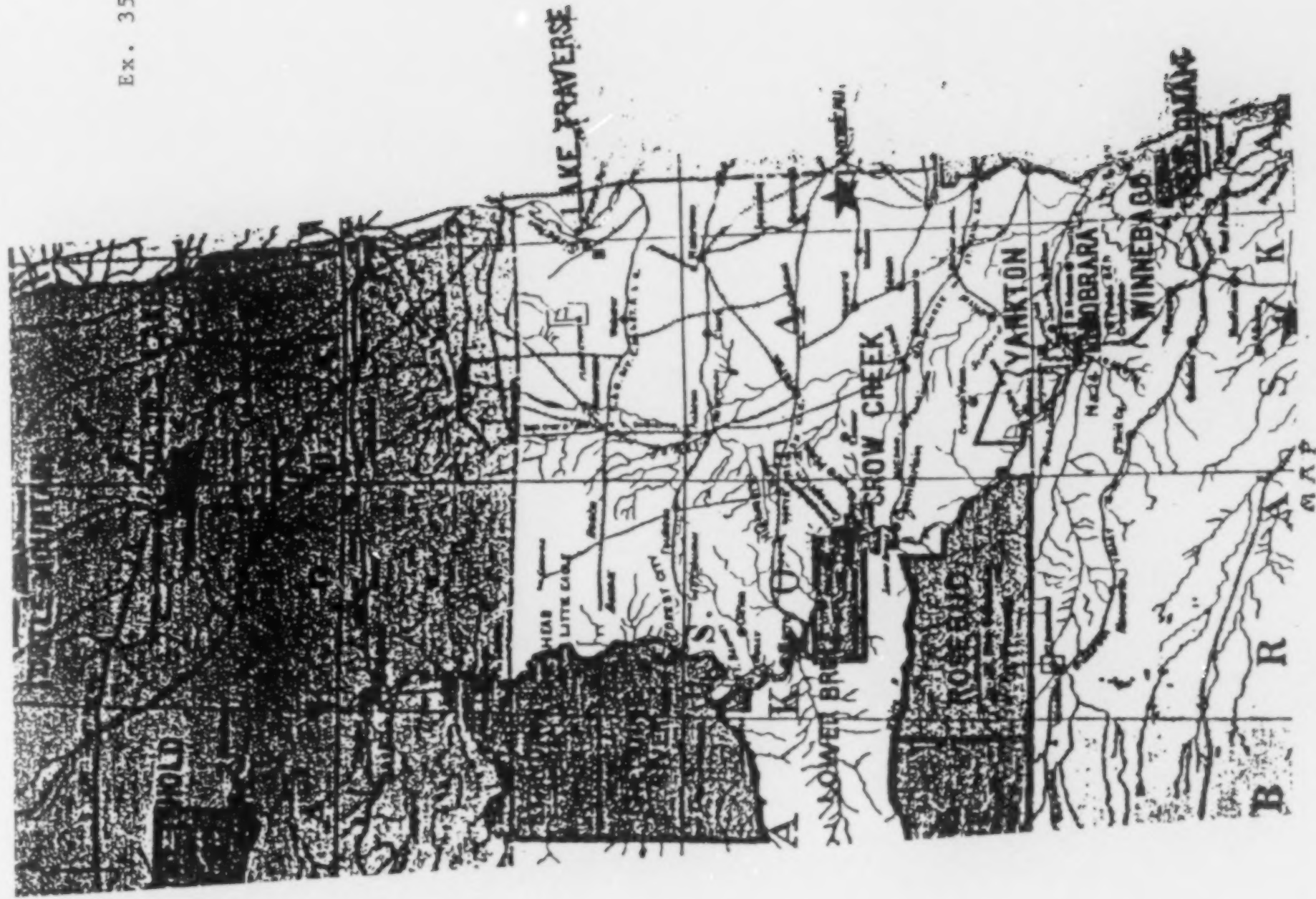
Q - tribal members? And the same would be true with regard to Tripp County?

A Same is true there.

* * *







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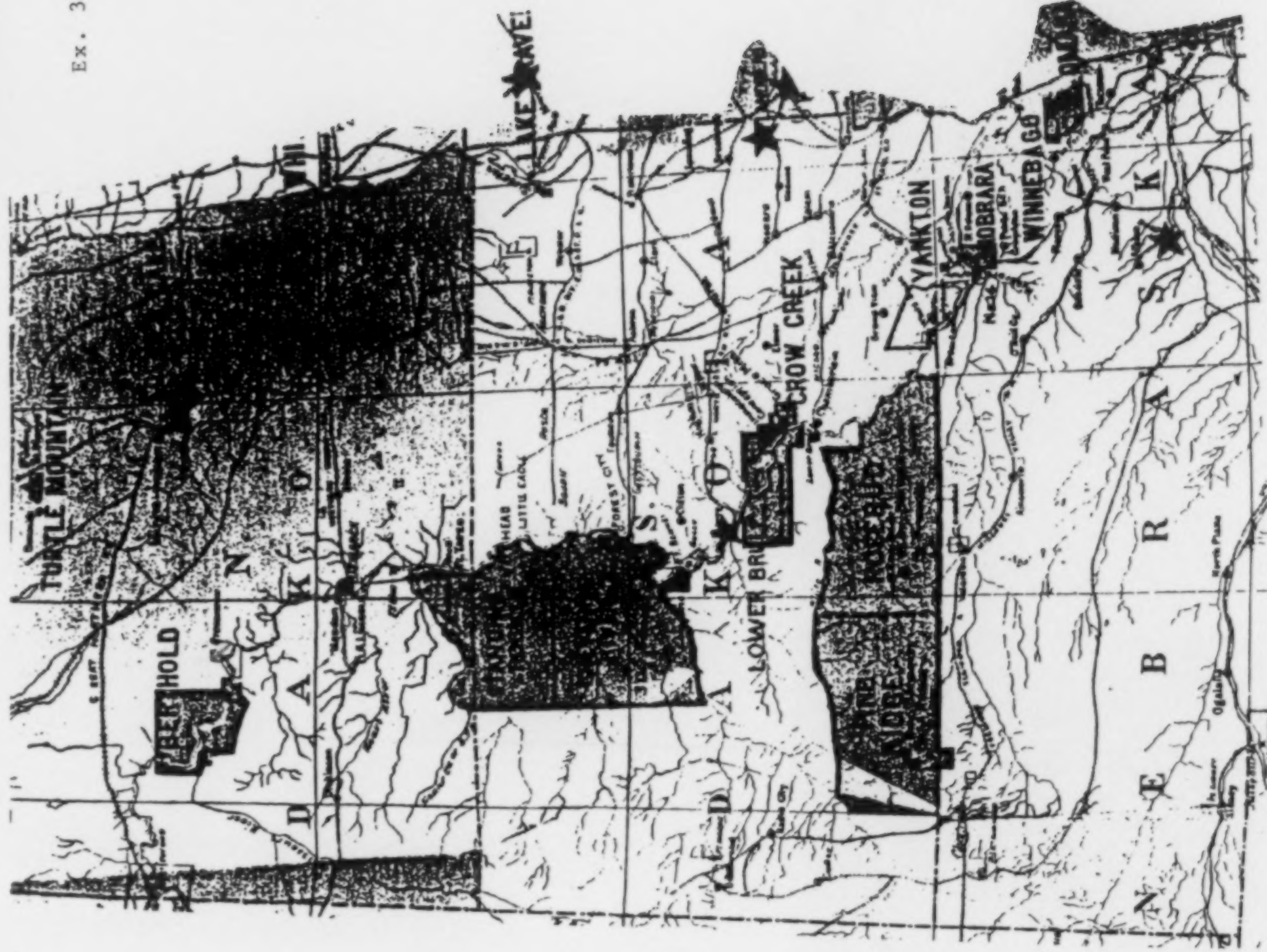
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' Hon. D. M. BROWNING.

Commissioner of Indian Affairs

1896



MAP

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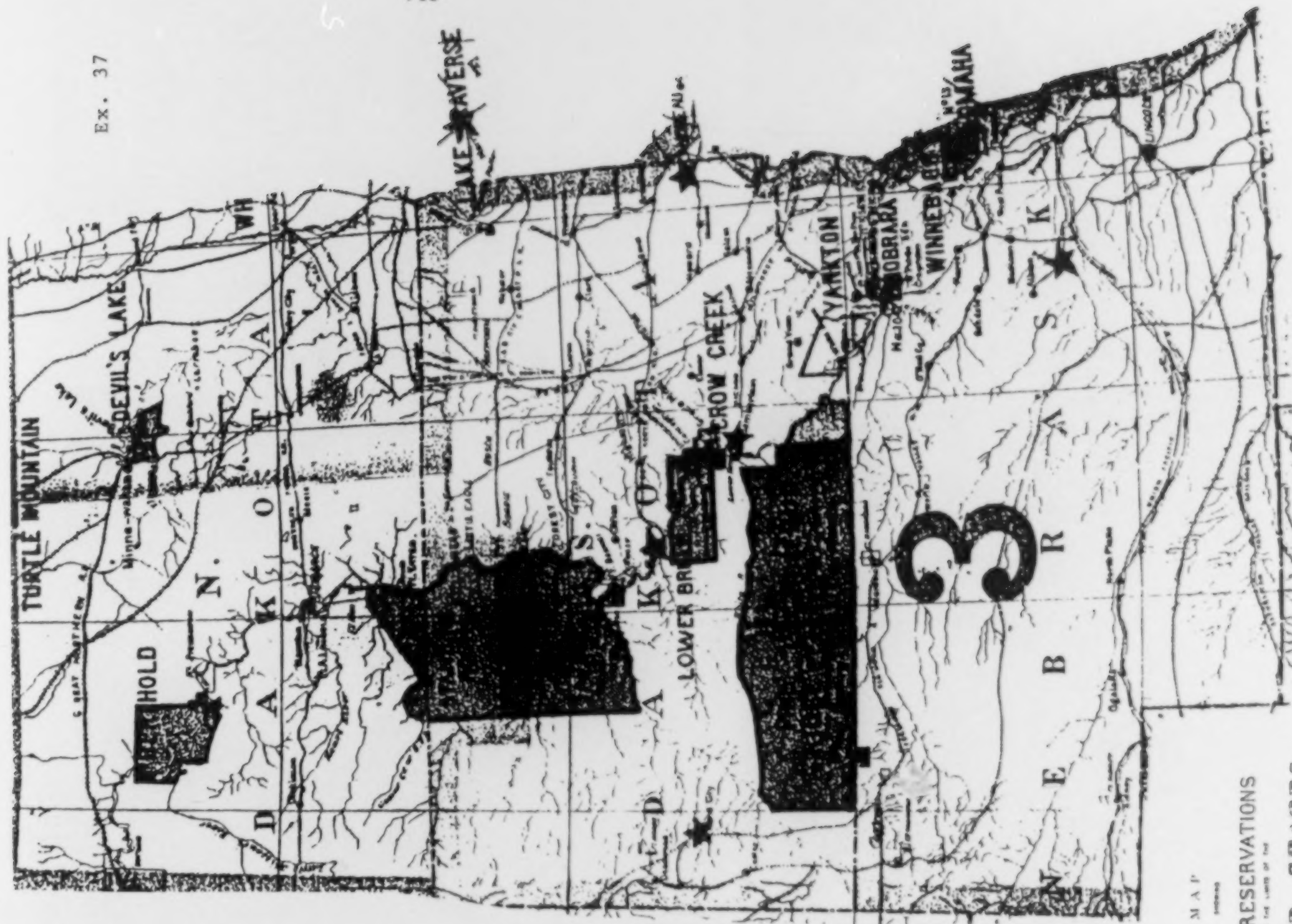
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Commissioner of Indian Affairs

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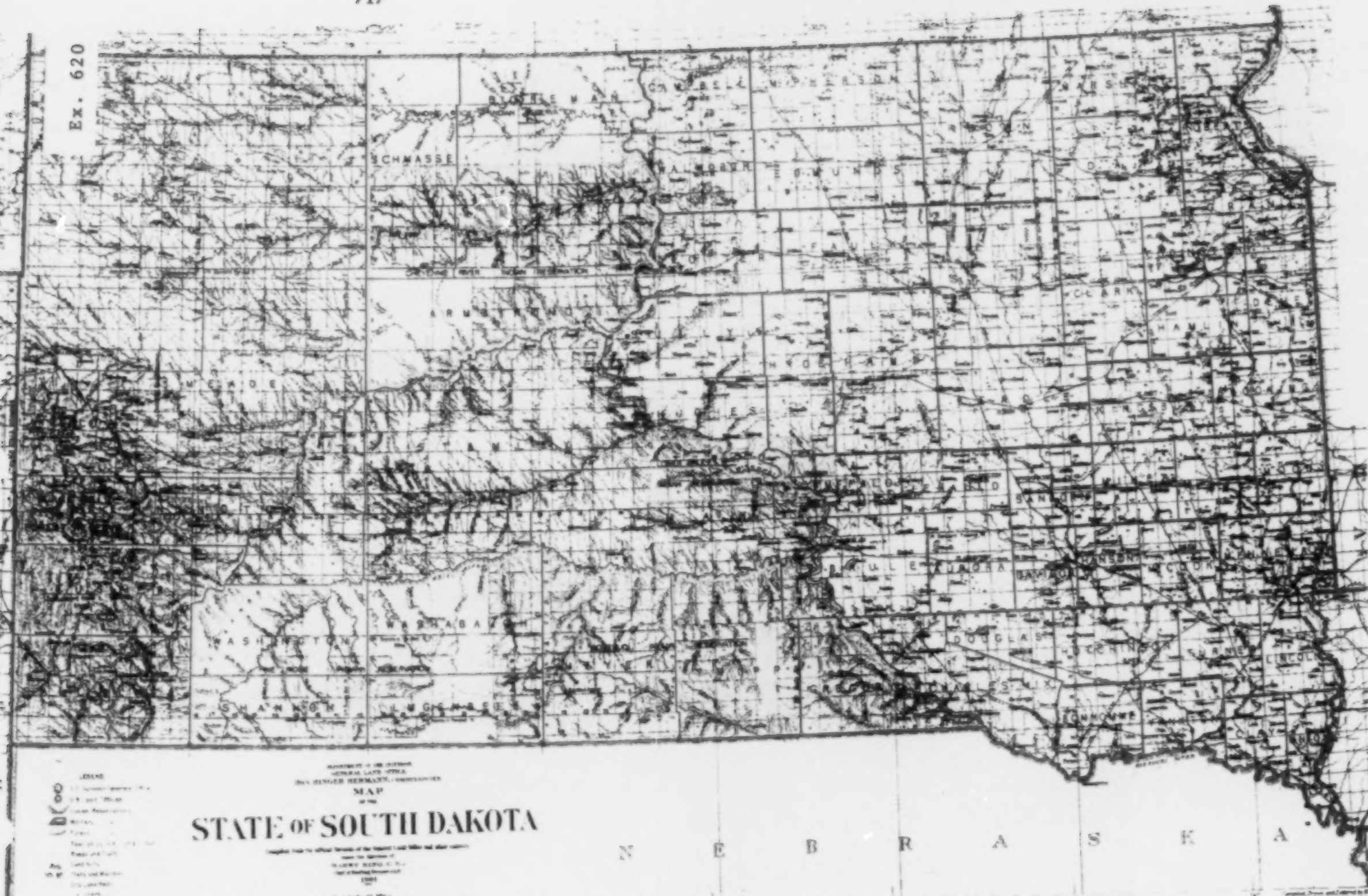
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Ex. 37



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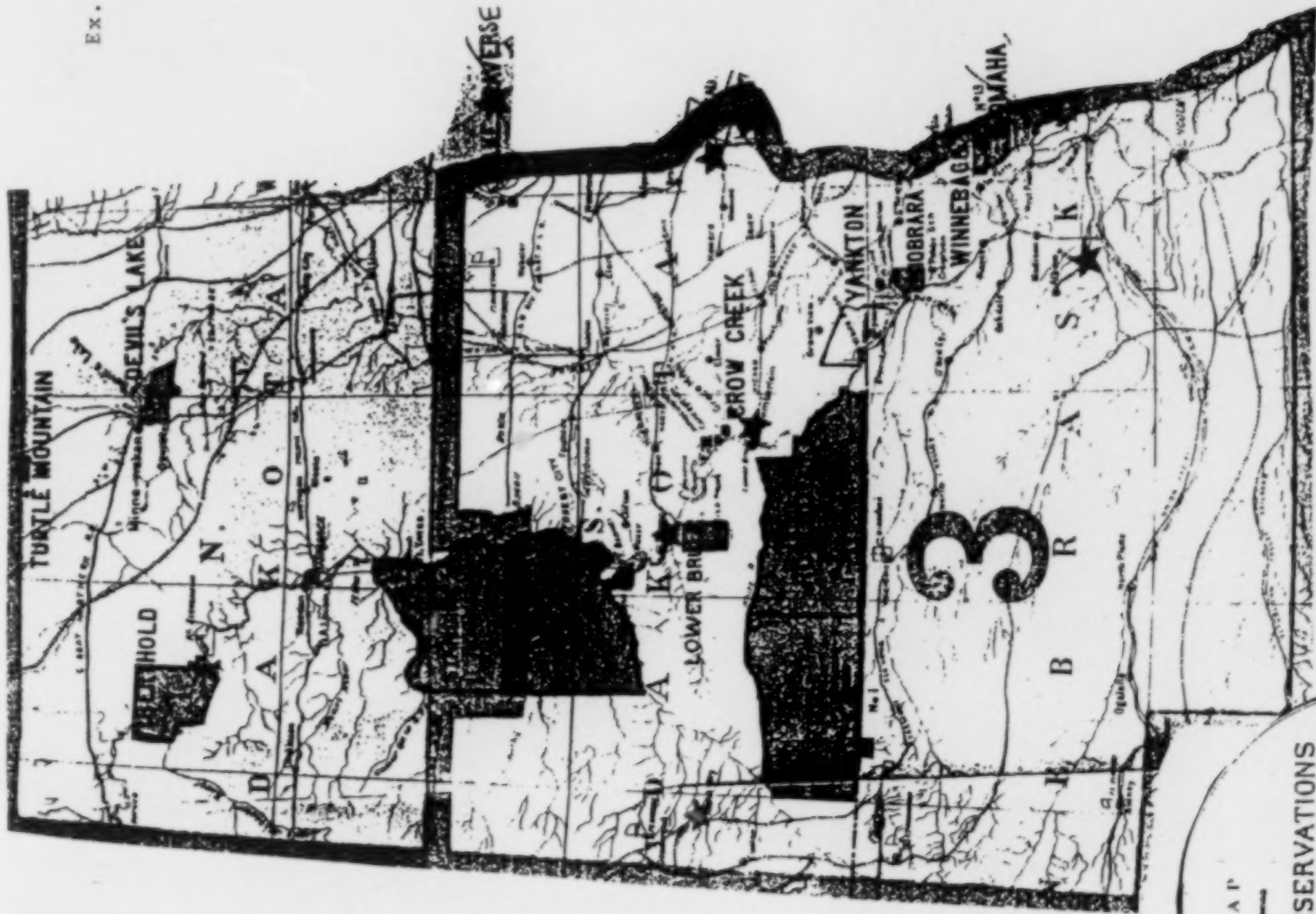


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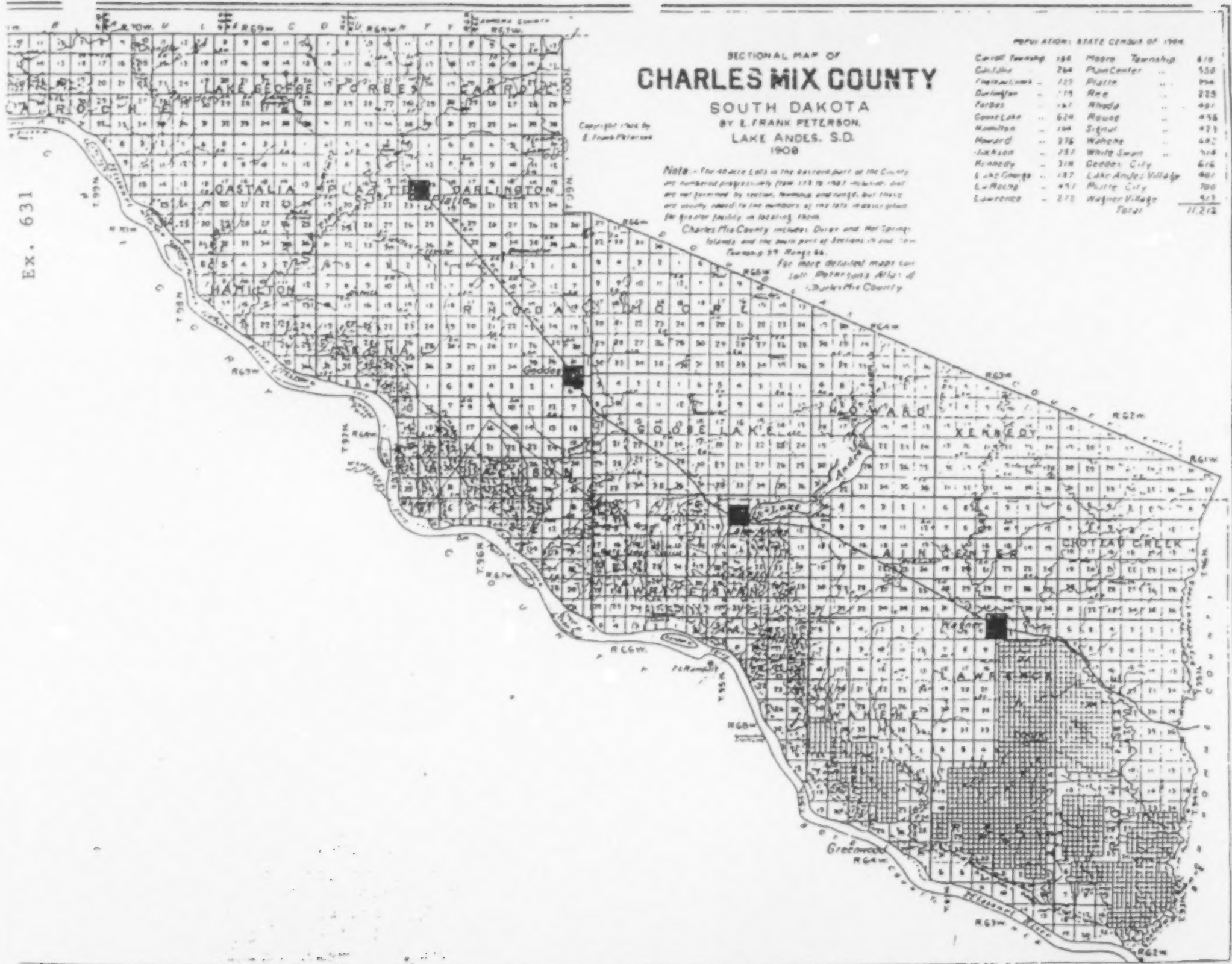
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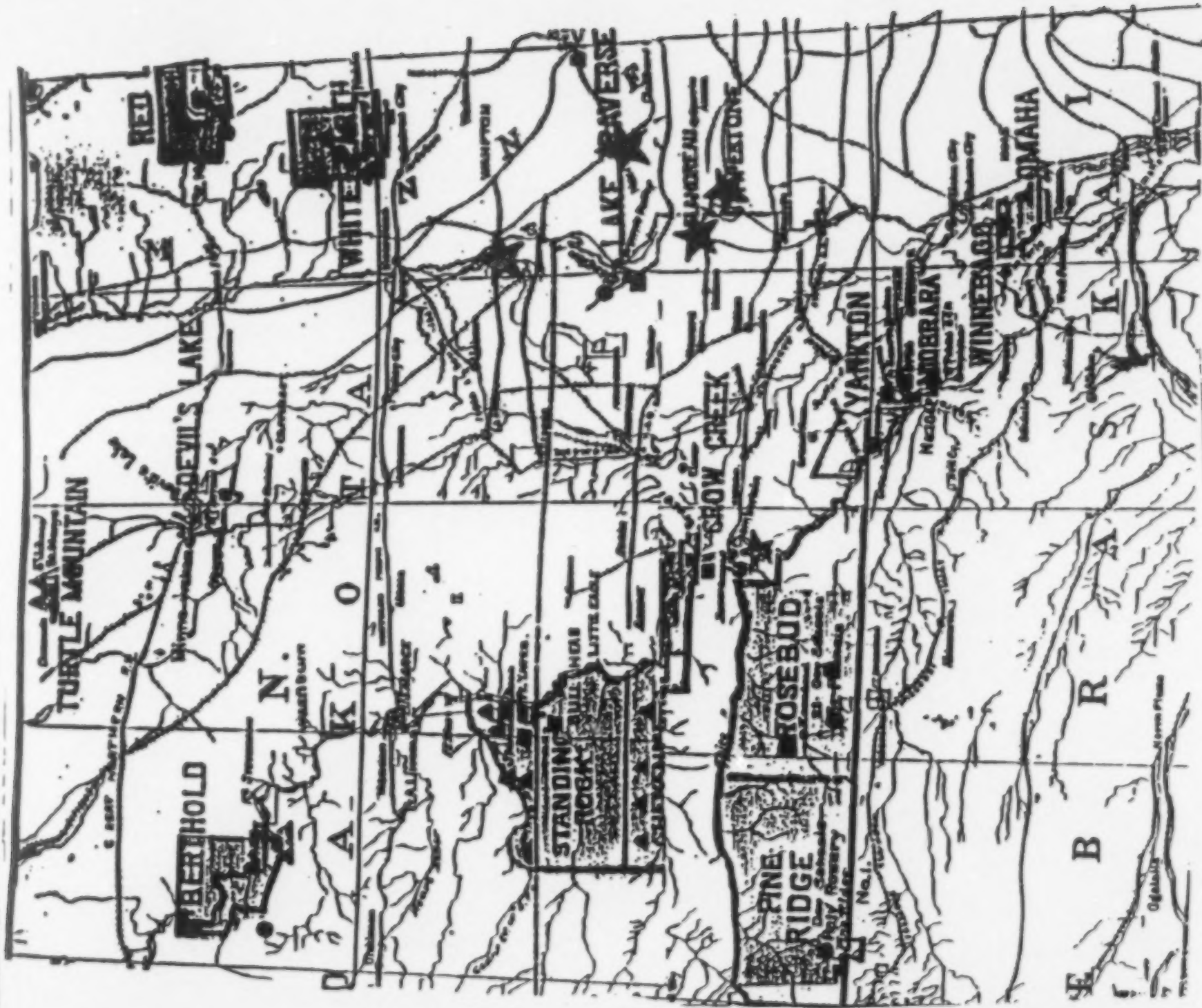
REPRODUCED FROM THE OFFICIAL RECORDS OF THE SURVEY OF THE LAND OFFICE AND OTHER SOURCES
 BY THE SURVEY OF THE LAND OFFICE
 MAP
 OF THE
 STATE OF SOUTH DAKOTA
 BY HENRY HERMAN, C. E.
 Chief of Surveying Division
 1904
 Scale 1 inch = 40 Miles



MAP
INDIAN RESERVATIONS
WITHIN THE LIMITS OF THE
UNITED STATES
COMPILED UNDER THE DIRECTION OF THE
Hon. W.A. JONES.
1901.



Ex. 631



MAP

INDIAN RESERVATIONS

SHOWING THE LIMITS OF THE

UNITED STATES

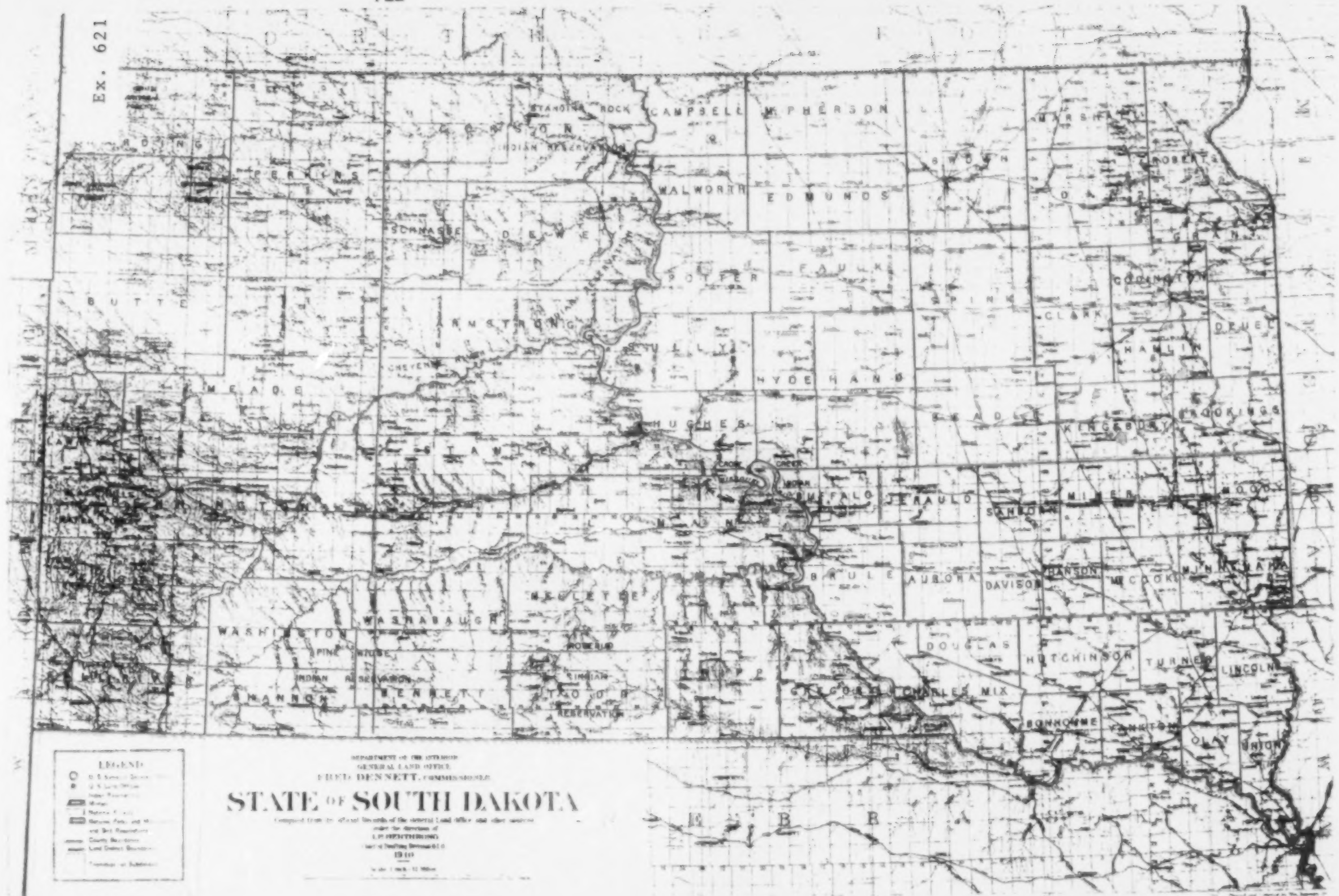
COMPILED UNDER THE DIRECTION OF THE

HON. F. E. LEUPP

Scale of Miles

Scale of Miles

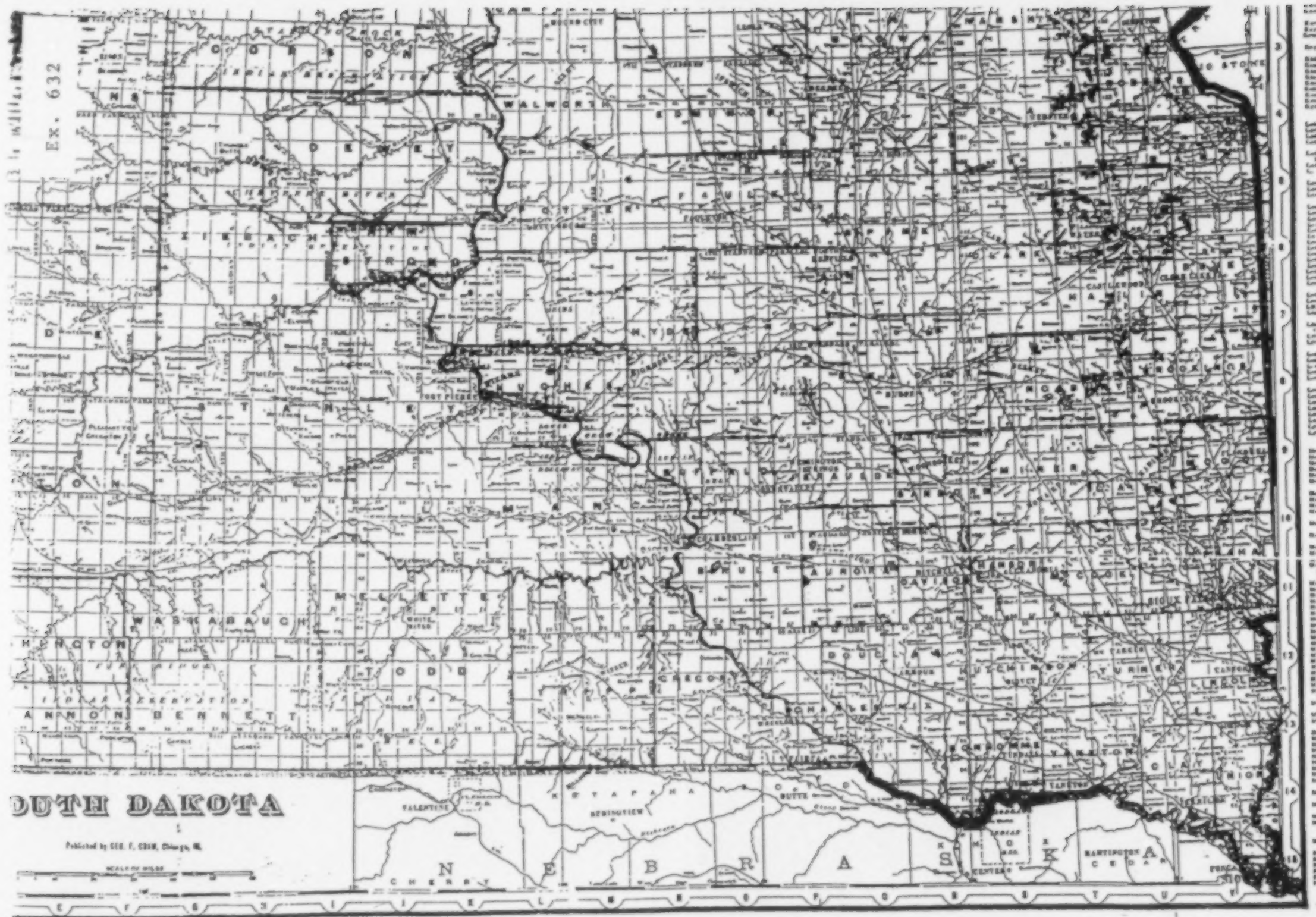
Ex. 621





LEGEND	
<input type="checkbox"/>	INDIAN RESERVATION
<input type="checkbox"/>	OPENED *
<input checked="" type="checkbox"/>	Non-Resident School
<input checked="" type="checkbox"/>	Boarding School
<input checked="" type="checkbox"/>	Day School
<input checked="" type="checkbox"/>	Summerization
<input checked="" type="checkbox"/>	Indian School Contract
<input checked="" type="checkbox"/>	Private Agency
<input checked="" type="checkbox"/>	PAID ADO

*Numbers indicate number of Schools



Ex. 632



Two miles
dry sand
to the point
where the road
ends